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CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September, 2012

**CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2012 REGULAR SESSION**

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Volume 11

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



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PUBLISHER'S FOREWORD

Statutes

The 2012 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2012 Regular Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal Series
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

PUBLISHER'S FOREWORD

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2012 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2012

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§ 41-3-1.1. Reconstitution of State Board of Health; qualifications, appointment, and terms of members; statement of economic interest; recusal from participation in certain matters [Repealed effective June 30, 2014].

SOURCES: Laws, 2007, ch. 514, § 2; reenacted without change, Laws, 2010, ch. 505, § 1, eff from and after May 1, 2010. See Editor’s Note.

Editor’s Note — This section was reenacted without change by Laws of 2010, ch. 505, effective from and after July 1, 2010 (amended by ch. 556, § 1, to be effective from and after May 1, 2010. See below.) Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Laws of 2010, ch. 556, § 1, provides:
“SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:
“Section 18. This act shall take effect and be in force from and after May 1, 2010.”
Amendment Notes — The 2010 amendment reenacted the section without change.

§ 41-3-3. Oath of members [Repealed effective June 30, 2014].

SOURCES: Codes, 1892, § 2268; 1906, § 2483; Hemingway’s 1917, § 4832; 1930, § 4869; 1942, § 7025; Laws, 1924, ch. 313; reenacted without change, Laws, 1982, ch. 494, § 2; reenacted, Laws, 1990, ch. 568, § 2; reenacted without change, Laws, 1994, ch. 462, § 2; reenacted, Laws, 1995, ch. 363, § 2; reenacted without change, Laws, 2001, ch. 420, § 2; reenacted without change, Laws, 2007, ch. 514, § 3; reenacted without change, Laws, 2010, ch. 505, § 2, eff from and after May 1, 2010. See Editor’s Note.

Editor's Note — This section was reenacted without change by Laws of 2010, ch. 505, effective from and after July 1, 2010 (amended by ch. 556 § 1, to be effective from and after May 1, 2010. See below.) Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Laws of 2010, ch. 556, § 1, provides:

“SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

“Section 18. This act shall take effect and be in force from and after May 1, 2010.”

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 41-3-4. Chairman and vice-chairman; meetings; automatic termination of members' terms of office for nonattendance; compensation [Repealed effective June 30, 2014].

SOURCES: Laws, 1980, ch. 465, § 2; Laws, 1980, ch. 560, § 31; reenacted without change, Laws, 1982, ch. 494, § 3; reenacted, Laws, 1990, ch. 568, § 3; reenacted without change, Laws, 1994, ch. 462, § 3; reenacted, Laws, 1995, ch. 363, § 3; reenacted without change, Laws, 2001, ch. 420, § 3; reenacted and amended, Laws, 2007, ch. 514, § 4; reenacted without change, Laws, 2010, ch. 505, § 3, eff from and after May 1, 2010. See Editor's Note.

Editor's Note — This section was reenacted without change by Laws of 2010, ch. 505, effective from and after July 1, 2010 (amended by ch. 556 § 1, to be effective from and after May 1, 2010. See below.) Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Laws of 2010, ch. 556, § 1, provides:

“SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

“Section 18. This act shall take effect and be in force from and after May 1, 2010.”

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 41-3-5.1. Executive officer; qualifications; term of office; removal [Repealed effective June 30, 2014].

SOURCES: Laws, 2007, ch. 514, § 5; reenacted without change, Laws, 2010, ch. 505, § 4, eff from and after May 1, 2010. See Editor's Note.

Editor's Note — This section was reenacted without change by Laws of 2010, ch. 505, effective from and after July 1, 2010 (amended by ch. 556 § 1, to be effective from and after May 1, 2010. See below.) Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Laws of 2010, ch. 556, § 1, provides:

“SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

“Section 18. This act shall take effect and be in force from and after May 1, 2010.”

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 41-3-6. State Board of Health to review existing legislation pertaining to public health and to submit new legislation [Repealed effective June 30, 2014].

SOURCES: Laws, 1980, ch. 465, § 4; reenacted without change, 1982, ch. 494, § 5; reenacted, Laws, 1990, ch. 568, § 5; reenacted without change, Laws, 1994, ch. 462, § 5; reenacted, Laws, 1995, ch. 363, § 5; reenacted without change, Laws, 2001, ch. 420, § 5; reenacted without change, Laws, 2007, ch. 514, § 6; reenacted without change, Laws, 2010, ch. 505, § 5, eff from and after May 1, 2010. See Editor's Note.

Editor's Note — This section was reenacted without change by Laws of 2010, ch. 505, effective from and after July 1, 2010 (amended by ch. 556 § 1, to be effective from and after May 1, 2010. See below.) Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Laws of 2010, ch. 556, § 1, provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 41-3-13. Findings; WISEWOMAN and WISEMAN pilot programs established to reduce the incidences of certain chronic diseases among Mississippians through education, prevention and early screening and detection.

(1) The Legislature makes the following findings:

(a) Chronic diseases are among the most prevalent, costly and preventable of all health problems.

(b) Screening tests are currently available that can detect heart disease, breast cancer, cervical cancer, colorectal cancer, prostate cancer and other chronic diseases early, when they can be most effectively treated, managed or controlled.

(c) The risk factors for many chronic diseases can be addressed and reduced through education about those risk factors and the importance of actions that can be taken for prevention of chronic diseases.

(d) People should partner with their health care providers to have their risk factors assessed, monitored and managed in accordance with national guidelines, and should be educated about the signs and symptoms of heart attack and stroke and the importance of getting help quickly at the onset of those symptoms.

(e) Mississippi should have programs that are specifically designed to reduce the incidences of chronic diseases among our population.

(2) The State Department of Health is authorized in its discretion to establish the WISEWOMAN pilot program and the WISEMAN pilot program, the purposes and goals of which are to reduce the incidences of certain chronic diseases among Mississippians through education, prevention and early screening and detection. The pilot program shall be conditioned upon the availability of funds obtained for such purpose from public or private sources.

The focus of the WISEWOMAN pilot program shall be heart disease, stroke, breast cancer, cervical cancer and colorectal cancer in women, and the focus of the WISEMAN pilot program shall be heart disease, stroke, prostate cancer, colorectal cancer and diabetes in men. At a minimum, the WISEWOMAN and WISEMAN pilot programs shall:

- (a) Provide for education about healthy behaviors and how to reduce the risk factors for those chronic diseases;
- (b) Provide for screening and testing to detect those chronic diseases early when they can be effectively treated, managed or controlled; and
- (c) Be directed toward those populations at greatest need and be based on a foundation of scientific evidence.

(3) In implementing the WISEWOMAN and WISEMAN pilot programs, the department shall contract with public or private clinics or agencies that have demonstrated success in reducing incidences of those chronic diseases through education, prevention and early screening and detection.

(4) The department shall seek and apply for grants from the Centers for Disease Control and Prevention and other public or private entities to obtain funding for the WISEWOMAN and WISEMAN pilot programs.

SOURCES: Laws, 2010, ch. 505, § 14, eff from and after May 1, 2010. See Editor's Note.

Editor's Note — This section was added by Laws of 2010, ch. 505, effective from and after July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1, which provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

A former § 41-3-13 [Codes, 1892, §§ 2282-2284; 1906, §§ 2506-2508; Hemingway's 1917, §§ 4855-4857; 1930, §§ 4892-4894; 1942, §§ 7048-7050; Laws, 1960, ch. 351, §§ 2, 3], which related to the compensation and expenses of members of the State Board of Health and the milk advisory committee and provided for the method of payment, was repealed by Laws of 1980, ch. 465, § 6, effective from and after July 1, 1980.

Laws of 2011, ch. 543, § 1, effective April 26, 2011, provides:

"SECTION 1. (1) There is created an advisory committee to study and provide recommendations to the Legislature regarding the areas of this state that are underserved in the retail availability of fresh fruits and vegetables and other healthy foods and the impact of the limited retail availability of such foods on proper nutrition and on obesity and related chronic illnesses, including heart attacks and diabetes.

"(2) The advisory committee shall consist of the following fifteen (15) members:

"(a) The State Health Officer, or his designee;

"(b) The Executive Director of the Division of Medicaid, or his designee;

"(c) One (1) person who is a member of a county board of supervisors, to be appointed by the Lieutenant Governor;

"(d) One (1) person who is a mayor of a municipality, to be appointed by the Speaker of the House of Representatives;

"(e) The Commissioner of Agriculture and Commerce, or his designee;

"(f) The Executive Director of the Department of Human Services, or his designee;

"(g) The Chairman of the House Public Health and Human Services Committee;

"(h) The Chairman of the Senate Public Health and Welfare Committee;

"(i) The Chairman of the House Agriculture Committee;

- “(j) The Chairman of the Senate Agriculture Committee;
- “(k) Two (2) other members of the House of Representatives, to be appointed by the Speaker of the House of Representatives;
- “(l) Two (2) other members of the Senate, to be appointed by the Lieutenant Governor; and
- “(m) A registered dietitian or nutritionist, appointed by the Governor.
- “(3) In appointing members of the advisory committee, an appointing authority shall ensure that the members reflect the diversity of this state, with members representing:
 - “(a) Rural areas;
 - “(b) Urban areas; and
 - “(c) Different geographical regions of the state.
- “(4) An advisory committee member is not entitled to reimbursement of expenses or to compensation.
- “(5) The advisory committee shall meet not later than sixty (60) days after the effective date of this act and shall select a chairman. The committee shall meet regularly as necessary at the call of the chairman.
- “(6) The advisory committee shall:
 - “(a) Investigate the retail availability of fresh fruits and vegetables and other healthy foods in this state;
 - “(b) Develop recommendations for creating and a plan for implementing a statewide financing program to bring fresh food retailers into areas of this state that are underserved in regard to the retail availability of fresh fruits and vegetables and other healthy foods; and
 - “(c) Perform other advisory duties regarding the availability of fresh fruits and vegetables and other healthy foods in this state.
- “(7) The advisory committee shall submit a report to the Legislature not later than December 1, 2011, providing information relating to:
 - “(a) The costs, benefits, and feasibility of a statewide financing program to bring fresh food retailers into areas of this state that are underserved in regard to the retail availability of fresh fruits and vegetables and other healthy foods; and
 - “(b) A plan for implementing the program.
- “(8) To effectuate the work of the advisory committee, any department, division, board, bureau, commission or agency of the state or of any political subdivision thereof, at the request of the chair of the committee, shall provide to the committee the facilities, staff assistance and data as will enable it to properly carry out its task.
- “(9) The advisory committee shall be dissolved upon the presentation of its report to the Legislature.”

§ 41-3-15. General powers, duties and authority of State Board of Health; certain specific powers of State Department of Health; general powers and duties of executive director; establishment of office of rural health [Repealed effective June 30, 2014].

- (1)(a) There shall be a State Department of Health.
- (b) The State Board of Health shall have the following powers and duties:
 - (i) To formulate the policy of the State Department of Health regarding public health matters within the jurisdiction of the department;
 - (ii) To adopt, modify, repeal and promulgate, after due notice and hearing, and enforce rules and regulations implementing or effectuating the powers and duties of the department under any and all statutes within the department’s jurisdiction, and as the board may deem necessary;

(iii) To apply for, receive, accept and expend any federal or state funds or contributions, gifts, trusts, devises, bequests, grants, endowments or funds from any other source or transfers of property of any kind;

(iv) To enter into, and to authorize the executive officer to execute, contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, if it finds those actions to be in the public interest and the contracts or agreements do not have a financial cost that exceeds the amounts appropriated for those purposes by the Legislature;

(v) To appoint, upon recommendation of the Executive Officer of the State Department of Health, a Director of Internal Audit who shall be either a Certified Public Accountant or Certified Internal Auditor, and whose employment shall be continued at the discretion of the board, and who shall report directly to the board, or its designee; and

(vi) To discharge such other duties, responsibilities and powers as are necessary to implement the provisions of this chapter.

(c) The Executive Officer of the State Department of Health shall have the following powers and duties:

(i) To administer the policies of the State Board of Health within the authority granted by the board;

(ii) To supervise and direct all administrative and technical activities of the department, except that the department's internal auditor shall be subject to the sole supervision and direction of the board;

(iii) To organize the administrative units of the department in accordance with the plan adopted by the board and, with board approval, alter the organizational plan and reassign responsibilities as he or she may deem necessary to carry out the policies of the board;

(iv) To coordinate the activities of the various offices of the department;

(v) To employ, subject to regulations of the State Personnel Board, qualified professional personnel in the subject matter or fields of each office, and such other technical and clerical staff as may be required for the operation of the department. The executive officer shall be the appointing authority for the department, and shall have the power to delegate the authority to appoint or dismiss employees to appropriate subordinates, subject to the rules and regulations of the State Personnel Board;

(vi) To recommend to the board such studies and investigations as he or she may deem appropriate, and to carry out the approved recommendations in conjunction with the various offices;

(vii) To prepare and deliver to the Legislature and the Governor on or before January 1 of each year, and at such other times as may be required by the Legislature or Governor, a full report of the work of the department and the offices thereof, including a detailed statement of expenditures of the department and any recommendations the board may have;

(viii) To prepare and deliver to the Chairmen of the Public Health and Welfare/Human Services Committees of the Senate and House on or before January 1 of each year, a plan for monitoring infant mortality in Mississippi and a full report of the work of the department on reducing Mississippi's infant mortality and morbidity rates and improving the status of maternal and infant health; and

(ix) To enter into contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, if he or she finds those actions to be in the public interest and the contracts or agreements do not have a financial cost that exceeds the amounts appropriated for those purposes by the Legislature. Each contract or agreement entered into by the executive officer shall be submitted to the board before its next meeting.

(2) The State Board of Health shall have the authority to establish an Office of Rural Health within the department. The duties and responsibilities of this office shall include the following:

(a) To collect and evaluate data on rural health conditions and needs;

(b) To engage in policy analysis, policy development and economic impact studies with regard to rural health issues;

(c) To develop and implement plans and provide technical assistance to enable community health systems to respond to various changes in their circumstances;

(d) To plan and assist in professional recruitment and retention of medical professionals and assistants; and

(e) To establish information clearinghouses to improve access to and sharing of rural health care information.

(3) The State Board of Health shall have general supervision of the health interests of the people of the state and to exercise the rights, powers and duties of those acts which it is authorized by law to enforce.

(4) The State Board of Health shall have authority:

(a) To make investigations and inquiries with respect to the causes of disease and death, and to investigate the effect of environment, including conditions of employment and other conditions that may affect health, and to make such other investigations as it may deem necessary for the preservation and improvement of health.

(b) To make such sanitary investigations as it may, from time to time, deem necessary for the protection and improvement of health and to investigate nuisance questions that affect the security of life and health within the state.

(c) To direct and control sanitary and quarantine measures for dealing with all diseases within the state possible to suppress same and prevent their spread.

(d) To obtain, collect and preserve such information relative to mortality, morbidity, disease and health as may be useful in the discharge of its

duties or may contribute to the prevention of disease or the promotion of health in this state.

(e) To charge and collect reasonable fees for health services, including immunizations, inspections and related activities, and the board shall charge fees for those services; provided, however, if it is determined that a person receiving services is unable to pay the total fee, the board shall collect any amount that the person is able to pay.

(f)(i) To establish standards for, issue permits and exercise control over, any cafes, restaurants, food or drink stands, sandwich manufacturing establishments, and all other establishments, other than churches, church-related and private schools, and other nonprofit or charitable organizations, where food or drink is regularly prepared, handled and served for pay; and

(ii) To require that a permit be obtained from the Department of Health before those persons begin operation. If any such person fails to obtain the permit required in this subparagraph (ii), the State Board of Health, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed One Thousand Dollars (\$1,000.00) for each violation. However, the department is not authorized to impose a monetary penalty against any person whose gross annual prepared food sales are less than Five Thousand Dollars (\$5,000.00). Money collected by the board under this subparagraph (ii) shall be deposited to the credit of the State General Fund of the State Treasury.

(g) To promulgate rules and regulations and exercise control over the production and sale of milk pursuant to the provisions of Sections 75-31-41 through 75-31-49.

(h) On presentation of proper authority, to enter into and inspect any public place or building where the State Health Officer or his representative deems it necessary and proper to enter for the discovery and suppression of disease and for the enforcement of any health or sanitary laws and regulations in the state.

(i) To conduct investigations, inquiries and hearings, and to issue subpoenas for the attendance of witnesses and the production of books and records at any hearing when authorized and required by statute to be conducted by the State Health Officer or the State Board of Health.

(j) To promulgate rules and regulations, and to collect data and information, on (i) the delivery of services through the practice of telemedicine; and (ii) the use of electronic records for the delivery of telemedicine services.

(k) To enforce and regulate domestic and imported fish as authorized under Section 69-7-601 et seq.

(5)(a) The State Board of Health shall have the authority, in its discretion, to establish programs to promote the public health, to be administered by the State Department of Health. Specifically, those programs may include, but shall not be limited to, programs in the following areas:

(i) Maternal and child health;

(ii) Family planning;

- (iii) Pediatric services;
- (iv) Services to crippled and disabled children;
- (v) Control of communicable and noncommunicable disease;
- (vi) Chronic disease;
- (vii) Accidental deaths and injuries;
- (viii) Child care licensure;
- (ix) Radiological health;
- (x) Dental health;
- (xi) Milk sanitation;
- (xii) Occupational safety and health;
- (xiii) Food, vector control and general sanitation;
- (xiv) Protection of drinking water;
- (xv) Sanitation in food handling establishments open to the public;
- (xvi) Registration of births and deaths and other vital events;
- (xvii) Such public health programs and services as may be assigned to the State Board of Health by the Legislature or by executive order; and
- (xviii) Regulation of domestic and imported fish for human consumption.

(b) The State Board of Health and State Department of Health shall not be authorized to sell, transfer, alienate or otherwise dispose of any of the home health agencies owned and operated by the department on January 1, 1995, and shall not be authorized to sell, transfer, assign, alienate or otherwise dispose of the license of any of those home health agencies, except upon the specific authorization of the Legislature by an amendment to this section. However, this paragraph (b) shall not prevent the board or the department from closing or terminating the operation of any home health agency owned and operated by the department, or closing or terminating any office, branch office or clinic of any such home health agency, or otherwise discontinuing the providing of home health services through any such home health agency, office, branch office or clinic, if the board first demonstrates that there are other providers of home health services in the area being served by the department's home health agency, office, branch office or clinic that will be able to provide adequate home health services to the residents of the area if the department's home health agency, office, branch office or clinic is closed or otherwise discontinues the providing of home health services. This demonstration by the board that there are other providers of adequate home health services in the area shall be spread at length upon the minutes of the board at a regular or special meeting of the board at least thirty (30) days before a home health agency, office, branch office or clinic is proposed to be closed or otherwise discontinue the providing of home health services.

(c) The State Department of Health may undertake such technical programs and activities as may be required for the support and operation of those programs, including maintaining physical, chemical, bacteriological and radiological laboratories, and may make such diagnostic tests for diseases and tests for the evaluation of health hazards as may be deemed necessary for the protection of the people of the state.

(6)(a) The State Board of Health shall administer the local governments and rural water systems improvements loan program in accordance with the provisions of Section 41-3-16.

(b) The State Board of Health shall have authority:

(i) To enter into capitalization grant agreements with the United States Environmental Protection Agency, or any successor agency thereto;

(ii) To accept capitalization grant awards made under the federal Safe Drinking Water Act, as amended;

(iii) To provide annual reports and audits to the United States Environmental Protection Agency, as may be required by federal capitalization grant agreements; and

(iv) To establish and collect fees to defray the reasonable costs of administering the revolving fund or emergency fund if the State Board of Health determines that those costs will exceed the limitations established in the federal Safe Drinking Water Act, as amended. The administration fees may be included in loan amounts to loan recipients for the purpose of facilitating payment to the board; however, those fees may not exceed five percent (5%) of the loan amount.

(7) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The department shall issue a license to Alexander Milne Home for Women, Inc., a 501(c)(3) nonprofit corporation, for the construction, conversion, expansion and operation of not more than forty-five (45) beds for developmentally disabled adults who have been displaced from New Orleans, Louisiana, with the beds to be located in a certified ICF-MR facility in the City of Laurel, Mississippi. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the license under this subsection (7). The license described in this subsection shall expire five (5) years from the date of its issue. The license authorized by this subsection shall be issued upon the initial payment by the licensee of an application fee of Sixty-seven Thousand Dollars (\$67,000.00) and a monthly fee of Sixty-seven Thousand Dollars (\$67,000.00) after the issuance of the license, to be paid as long as the licensee continues to operate. The initial and monthly licensing fees shall be deposited by the State Department of Health into the special fund created under Section 41-7-188.

(8) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized to issue a license to an existing home health agency for the transfer of a county from that agency to another existing home health agency, and to charge a fee for reviewing and making a determination on the application for such transfer not to exceed one-half ($\frac{1}{2}$) of the authorized fee assessed for the original application for the home health agency, with the revenue to be deposited by the State Department of Health into the special fund created under Section 41-7-188.

(9) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: For the period beginning July 1, 2010, through June 30, 2014, the State Department of

Health is authorized and empowered to assess a fee in addition to the fee prescribed in Section 41-7-188 for reviewing applications for certificates of need in an amount not to exceed twenty-five one-hundredths of one percent (.25 of 1%) of the amount of a proposed capital expenditure, but shall be not less than Two Hundred Fifty Dollars (\$250.00) regardless of the amount of the proposed capital expenditure, and the maximum additional fee permitted shall not exceed Fifty Thousand Dollars (\$50,000.00). Provided that the total assessments of fees for certificate of need applications under Section 41-7-188 and this section shall not exceed the actual cost of operating the certificate of need program.

(10) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized to extend and renew any certificate of need that has expired, and to charge a fee for reviewing and making a determination on the application for such action not to exceed one-half ($\frac{1}{2}$) of the authorized fee assessed for the original application for the certificate of need, with the revenue to be deposited by the State Department of Health into the special fund created under Section 41-7-188.

(11) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized and empowered, to revoke, immediately, the license and require closure of any institution for the aged or infirm, including any other remedy less than closure to protect the health and safety of the residents of said institution or the health and safety of the general public.

(12) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized and empowered, to require the temporary detainment of individuals for disease control purposes based upon violation of any order of the State Health Officer, as provided in Section 41-23-5. For the purpose of enforcing such orders of the State Health Officer, persons employed by the department as investigators shall have general arrest powers. All law enforcement officers are authorized and directed to assist in the enforcement of such orders of the State Health Officer.

SOURCES: Codes, 1892, § 2271; 1906, § 2487; Hemingway's 1917, § 4836; 1930, § 4873; 1942, § 7029; Laws, 1968, ch. 441, § 2; Laws, 1971, ch. 378, § 1; reenacted and amended, Laws, 1982, ch. 494, § 6; Laws, 1983, ch. 522, § 1; Laws, 1986, ch. 371, § 1; Laws, 1986, ch. 500, § 22; Laws, 1987, ch. 512, § 5; Laws, 1988, ch. 395, § 4; Laws, 1988, ch. 573; reenacted and amended, Laws, 1990, ch. 568, § 6; Laws, 1992, ch. 495, § 1; reenacted and amended, Laws, 1994, ch. 462, § 6; reenacted and amended, Laws, 1995, ch. 363, § 6; Laws, 1995, ch. 521, § 21; Laws, 1997, ch. 523, § 2; Laws, 1998, ch. 332, § 1; reenacted without change, Laws, 2001, ch. 420, § 6; Laws, 2002, ch. 506, § 8; Laws, 2006, ch. 489, § 1; Laws, 2007, ch. 342, § 1; reenacted and amended, Laws, 2007, ch. 514, § 7; reenacted and amended, Laws, 2010, ch. 505, § 6, eff from and after May 1, 2010. See Editor's Note.

Editor's Note — This section was reenacted and amended by Laws of 2010, ch. 505, § 6, effective from and after July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1, which provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Laws of 2010, ch. 505, § 17, provides:

"SECTION 17. (1) The State Board of Health shall develop and make a report to the Public Health and Welfare Committees of the Senate and House of Representatives prior to the 2011 Regular Session of the Legislature with any necessary legislative recommendations on the following:

"(a) The definitions and standards relating to the licensure of 'personal care home,' 'assisted living facilities,' 'adult day care facilities' and 'psychiatric supervised housing facility' for the purposes of licensure purposes for institutions for the aged or infirm;

"(b) A determination as to whether the rules, regulations and standards adopted by the State Board of Health for personal care homes should be uniform for each of the classifications of personal care homes, but may vary based on the differences between the types of facilities in each classification.

"(2) Nothing in this section shall prohibit the State Board of Health from promulgating and implementing necessary rules and regulations."

Laws of 2011, ch. 543, § 1, effective April 26, 2011, provides:

"SECTION 1. (1) There is created an advisory committee to study and provide recommendations to the Legislature regarding the areas of this state that are underserved in the retail availability of fresh fruits and vegetables and other healthy foods and the impact of the limited retail availability of such foods on proper nutrition and on obesity and related chronic illnesses, including heart attacks and diabetes.

"(2) The advisory committee shall consist of the following fifteen (15) members:

"(a) The State Health Officer, or his designee;

"(b) The Executive Director of the Division of Medicaid, or his designee;

"(c) One (1) person who is a member of a county board of supervisors, to be appointed by the Lieutenant Governor;

"(d) One (1) person who is a mayor of a municipality, to be appointed by the Speaker of the House of Representatives;

"(e) The Commissioner of Agriculture and Commerce, or his designee;

"(f) The Executive Director of the Department of Human Services, or his designee;

"(g) The Chairman of the House Public Health and Human Services Committee;

"(h) The Chairman of the Senate Public Health and Welfare Committee;

"(i) The Chairman of the House Agriculture Committee;

"(j) The Chairman of the Senate Agriculture Committee;

"(k) Two (2) other members of the House of Representatives, to be appointed by the Speaker of the House of Representatives;

"(l) Two (2) other members of the Senate, to be appointed by the Lieutenant Governor; and

"(m) A registered dietitian or nutritionist, appointed by the Governor.

"(3) In appointing members of the advisory committee, an appointing authority shall ensure that the members reflect the diversity of this state, with members representing:

"(a) Rural areas;

"(b) Urban areas; and

"(c) Different geographical regions of the state.

"(4) An advisory committee member is not entitled to reimbursement of expenses or to compensation.

"(5) The advisory committee shall meet not later than sixty (60) days after the effective date of this act and shall select a chairman. The committee shall meet regularly as necessary at the call of the chairman.

"(6) The advisory committee shall:

“(a) Investigate the retail availability of fresh fruits and vegetables and other healthy foods in this state;

“(b) Develop recommendations for creating and a plan for implementing a statewide financing program to bring fresh food retailers into areas of this state that are underserved in regard to the retail availability of fresh fruits and vegetables and other healthy foods; and

“(c) Perform other advisory duties regarding the availability of fresh fruits and vegetables and other healthy foods in this state.

“(7) The advisory committee shall submit a report to the Legislature not later than December 1, 2011, providing information relating to:

“(a) The costs, benefits, and feasibility of a statewide financing program to bring fresh food retailers into areas of this state that are underserved in regard to the retail availability of fresh fruits and vegetables and other healthy foods; and

“(b) A plan for implementing the program.

“(8) To effectuate the work of the advisory committee, any department, division, board, bureau, commission or agency of the state or of any political subdivision thereof, at the request of the chair of the committee, shall provide to the committee the facilities, staff assistance and data as will enable it to properly carry out its task.

“(9) The advisory committee shall be dissolved upon the presentation of its report to the Legislature.”

Amendment Notes — The 2010 amendment reenacted and amended the section by adding (7) through (12).

§ 41-3-16. Local governments and rural water systems improvements revolving loan and grant program [Repealed effective June 30, 2014].

(1)(a) There is established a local governments and rural water systems improvements revolving loan and grant program to be administered by the State Department of Health, referred to in this section as “department,” for the purpose of assisting counties, incorporated municipalities, districts or other water organizations that have been granted tax exempt status under either federal or state law, in making improvements to their water systems, including construction of new water systems or expansion or repair of existing water systems. Loan and grant proceeds may be used by the recipient for planning, professional services, acquisition of interests in land, acquisition of personal property, construction, construction-related services, maintenance, and any other reasonable use which the board, in its discretion, may allow. For purposes of this section, “water systems” has the same meaning as the term “public water system” under Section 41-26-3.

(b)(i) There is created a board to be known as the “Local Governments and Rural Water Systems Improvements Board,” referred to in this section as “board,” to be composed of the following nine (9) members: the State Health Officer, or his designee, who shall serve as chairman of the board; the Executive Director of the Mississippi Development Authority, or his designee; the Executive Director of the Department of Environmental Quality, or his designee; the Executive Director of the Department of Finance and Administration, or his designee; the Executive Director of the Mississippi Association of Supervisors, or his designee; the Executive Director of the Mississippi Municipal League, or his designee; the Execu-

tive Director of the American Council of Engineering Companies of Mississippi, or his designee; the State Director of the United States Department of Agriculture, Rural Development, or his designee; and a manager of a rural water system.

The Governor shall appoint a manager of a rural water system from a list of candidates provided by the Executive Director of the Mississippi Rural Water Association. The Executive Director of the Mississippi Rural Water Association shall provide the Governor a list of candidates which shall contain a minimum of three (3) candidates for each appointment.

(ii) Nonappointed members of the board may designate another representative of their agency or association to serve as an alternate.

(iii) The gubernatorial appointee shall serve a term concurrent with the term of the Governor and until a successor is appointed and qualified. No member, officer or employee of the Board of Directors of the Mississippi Rural Water Association shall be eligible for appointment.

(c) The department, if requested by the board, shall furnish the board with facilities and staff as needed to administer this section. The department may contract, upon approval by the board, for those facilities and staff needed to administer this section, including routine management, as it deems necessary. The board may advertise for or solicit proposals from public or private sources, or both, for administration of this section or any services required for administration of this section or any portion thereof. It is the intent of the Legislature that the board endeavor to ensure that the costs of administration of this section are as low as possible in order to provide the water consumers of Mississippi safe drinking water at affordable prices.

(d) Members of the board may not receive any salary, compensation or per diem for the performance of their duties under this section.

(2)(a) There is created a special fund in the State Treasury to be designated as the "Local Governments and Rural Water Systems Improvements Revolving Loan Fund," referred to in this section as "revolving fund," which fund shall consist of those monies as provided in Sections 6 and 13 of Chapter 521, Laws of 1995. The revolving fund may receive appropriations, bond proceeds, grants, gifts, donations or funds from any source, public or private. Except as otherwise provided in this section, the revolving fund shall be credited with all repayments of principal and interest derived from loans made from the revolving fund. Except as otherwise provided in this section, the monies in the revolving fund may be expended only in amounts appropriated by the Legislature, and the different amounts specifically provided for the loan program and the grant program shall be so designated. Except as otherwise provided in this section, monies in the fund may only be expended for the grant program from the amount designated for such program. The revolving fund shall be maintained in perpetuity for the purposes established in this section and Sections 6 through 20 of Chapter 521, Laws of 1995. Unexpended amounts remaining in the revolving fund at the end of a fiscal year shall not lapse into the State General Fund, and any

interest earned on amounts in the revolving fund shall be deposited to the credit of the fund. Monies in the revolving fund may not be used or expended for any purpose except as authorized under this section and Sections 6 through 20 of Chapter 521, Laws of 1995. Any monies in the fund may be used to match any federal funds that are available for the same or related purposes for which funds are used and expended under this section and Sections 6 through 20 of Chapter 521, Laws of 1995. Any federal funds shall be used and expended only in accordance with federal laws, rules and regulations governing the expenditure of those funds. No person shall use any monies from the revolving fund for the acquisition of real property or any interest in real property unless that property is integral to the project funded under this section and the purchase is made from a willing seller. No county, incorporated municipality or district shall acquire any real property or any interest in any real property for a project funded through the revolving fund by condemnation. The board's application of Sections 43-37-1 through 43-37-13 shall be no more stringent or extensive in scope, coverage and effect than federal property acquisition laws and regulations.

(b) There is created a special fund in the State Treasury to be designated as the "Local Governments and Rural Water Systems Emergency Loan Fund," hereinafter referred to as "emergency fund," which fund shall consist of those monies as provided in Sections 6 and 13 of Chapter 521, Laws of 1995. The emergency fund may receive appropriations, bond proceeds, grants, gifts, donations or funds from any source, public or private. Except as otherwise provided in this section, the emergency fund shall be credited with all repayments of principal and interest derived from loans made from the emergency fund. Except as otherwise provided in this section, the monies in the emergency fund may be expended only in amounts appropriated by the Legislature. The emergency fund shall be maintained in perpetuity for the purposes established in this section and Section 6 of Chapter 521, Laws of 1995. Unexpended amounts remaining in the emergency fund at the end of a fiscal year shall not lapse into the State General Fund. Any interest earned on amounts in the emergency fund shall be deposited to the credit of the fund. Monies in the emergency fund may not be used or expended for any purpose except as authorized under this section and Section 6 of Chapter 521, Laws of 1995.

(c) The board created in subsection (1) shall establish loan and grant programs by which loans and grants may be made available to counties, incorporated municipalities, districts or other water organizations that have been granted tax exempt status under either federal or state law, to assist those counties, incorporated municipalities, districts or water organizations in making water systems improvements, including the construction of new water systems or expansion or repair of existing water systems. Any entity eligible under this section may receive either a loan or a grant, or both. No grant awarded under the program established in this section may be made using funds from the loan program. Grants may be awarded only when the Legislature specifically appropriates funds for that particular purpose. The

interest rate on those loans may vary from time to time and from loan to loan, and will be at or below market interest rates as determined by the board. The board shall act as quickly as is practicable and prudent in deciding on any loan request that it receives. Loans from the revolving fund or emergency fund may be made to counties, incorporated municipalities, districts or other water organizations that have been granted tax exempt status under either federal or state law, as set forth in a loan agreement in amounts not to exceed one hundred percent (100%) of eligible project costs as established by the board. The board may require county, municipal, district or other water organization participation or funding from other sources, or otherwise limit the percentage of costs covered by loans from the revolving fund or the emergency fund. The board may establish a maximum amount for any loan from the revolving fund or emergency fund in order to provide for broad and equitable participation in the programs.

(d) A county that receives a loan from the revolving fund or the emergency fund shall pledge for repayment of the loan any part of the homestead exemption annual tax loss reimbursement to which it may be entitled under Section 27-33-77, as may be required to meet the repayment schedule contained in the loan agreement. An incorporated municipality that receives a loan from the revolving fund or the emergency fund shall pledge for repayment of the loan any part of the sales tax revenue distribution to which it may be entitled under Section 27-65-75, as may be required to meet the repayment schedule contained in the loan agreement. All recipients of such loans shall establish a dedicated source of revenue for repayment of the loan. Before any county or incorporated municipality shall receive any loan, it shall have executed with the State Tax Commission and the board a loan agreement evidencing that loan. The loan agreement shall not be construed to prohibit any recipient from prepaying any part or all of the funds received. The repayment schedule in each loan agreement shall provide for (i) monthly payments, (ii) semiannual payments or (iii) other periodic payments, the annual total of which shall not exceed the annual total for any other year of the loan by more than fifteen percent (15%). Except as otherwise provided in subsection (4) of this section, the loan agreement shall provide for the repayment of all funds received from the revolving fund within not more than fifteen (15) years or a term as otherwise allowed by the federal Safe Drinking Water Act, and all funds received from the emergency fund within not more than five (5) years from the date of project completion, and any repayment shall commence not later than one (1) year after project completion. The State Tax Commission shall withhold semiannually from counties and monthly from incorporated municipalities from the amount to be remitted to the county or municipality, a sum equal to the next repayment as provided in the loan agreement.

(e) Any county, incorporated municipality, district or other water organization desiring to construct a project approved by the board which receives a loan from the state for that purpose but which is not eligible to pledge for repayment under the provisions of paragraph (d) of this subsection, shall

repay that loan by making payments each month to the State Treasurer through the Department of Finance and Administration for and on behalf of the board according to Section 7-7-15, to be credited to either the revolving fund or the emergency fund, whichever is appropriate, in lieu of pledging homestead exemption annual tax loss reimbursement or sales tax revenue distribution.

Loan repayments shall be according to a repayment schedule contained in each loan agreement as provided in paragraph (d) of this subsection.

(f) Any district created pursuant to Sections 19-5-151 through 19-5-207 that receives a loan from the revolving fund or the emergency fund shall pledge for repayment of the loan any part of the revenues received by that district pursuant to Sections 19-5-151 through 19-5-207, as may be required to meet the repayment schedule contained in the loan agreement.

(g) The State Auditor, upon request of the board, shall audit the receipts and expenditures of a county, an incorporated municipality, district or other water organization whose loan repayments appear to be in arrears, and if the Auditor finds that the county, incorporated municipality, district or other water organization is in arrears in those repayments, the Auditor shall immediately notify the chairman of the board who may take any action as may be necessary to enforce the terms of the loan agreement, including liquidation and enforcement of the security given for repayment of the loan, and the Executive Director of the Department of Finance and Administration who shall withhold all future payments to the county of homestead exemption annual tax loss reimbursements under Section 27-33-77 and all sums allocated to the county or the incorporated municipality under Section 27-65-75 until such time as the county or the incorporated municipality is again current in its loan repayments as certified by the board.

(h) Except as otherwise provided in this section, all monies deposited in the revolving fund or the emergency fund, including loan repayments and interest earned on those repayments, shall be used only for providing loans or other financial assistance to water systems as the board deems appropriate. In addition, any amounts in the revolving fund or the emergency fund may be used to defray the reasonable costs of administering the revolving fund or the emergency fund and conducting activities under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, subject to any limitations established in the federal Safe Drinking Water Act, as amended and subject to annual appropriation by the Legislature. The department is authorized, upon approval by the board, to use amounts available to it from the revolving fund or the emergency fund to contract for those facilities and staff needed to administer and provide routine management for the funds and loan program. However, notwithstanding any other provision of law to the contrary, all or any portion of repayments of principal and interest derived from the fund uses described in this section may be designated or pledged for repayment of a loan as provided for in Section 31-25-28 in connection with a loan from the Mississippi Development Bank.

(3) In administering this section and Sections 6 through 20 of Chapter 521, Laws of 1995, the board created in subsection (1) of this section shall have the following powers and duties:

(a) To supervise the use of all funds made available under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, for local governments and rural water systems improvements;

(b) To promulgate rules and regulations, to make variances and exceptions thereto, and to establish procedures in accordance with this section and Sections 6 through 20 of Chapter 521, Laws of 1995, for the implementation of the local governments and rural water systems improvements revolving loan program;

(c) To require, at the board's discretion, any loan or grant recipient to impose a per connection fee or surcharge or amended water rate schedule or tariff on each customer or any class of customers, benefiting from an improvement financed by a loan or grant made under this section, for repayment of any loan funds provided under this section and Sections 6 through 20 of Chapter 521, Laws of 1995. The board may require any loan or grant recipient to undergo a water system viability analysis and may require a loan or grant recipient to implement any result of the viability analysis. If the loan recipient fails to implement any result of a viability analysis as required by the board, the board may impose a monetary penalty or increase the interest rate on the loan, or both. If the grant recipient fails to implement any result of a viability analysis as required by the board, the board may impose a monetary penalty on the grant;

(d) To review and certify all projects for which funds are authorized to be made available under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, for local governments and rural water systems improvements;

(e) To requisition monies in the Local Governments and Rural Water Systems Improvements Revolving Loan Fund and the Local Governments and Rural Water Systems Emergency Loan Fund and distribute those monies on a project-by-project basis in accordance with this section;

(f) To ensure that the funds made available under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, to a county, an incorporated municipality, a district or a water organization that has been granted tax exempt status under either federal or state law provide for a distribution of projects and funds among the entities under a priority system established by the board;

(g) To maintain in accordance with generally accepted government accounting standards an accurate record of all monies in the revolving fund and the emergency fund made available to counties, incorporated municipalities, districts or other water organizations under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, and the costs for each project;

(h) To establish policies, procedures and requirements concerning viability and financial capability to repay loans that may be used in approving

loans available under this section, including a requirement that all loan recipients have a rate structure which will be sufficient to cover the costs of operation, maintenance, major equipment replacement and repayment of any loans made under this section; and

(i) To file annually with the Legislature a report detailing how monies in the Local Governments and Rural Water Systems Improvements Revolving Loan Fund and the Local Governments and Rural Water Systems Emergency Loan Fund were spent during the preceding fiscal year in each county, incorporated municipality, district or other water organization, the number of projects approved and constructed, and the cost of each project.

For efficient and effective administration of the loan program, revolving fund and emergency fund, the board may authorize the department or the State Health Officer to carry out any or all of the powers and duties enumerated above.

(4) The board may, on a case-by-case basis and to the extent allowed by federal law, renegotiate the payment of principal and interest on loans made under this section to the six (6) most southern counties of the state covered by the Presidential Declaration of Major Disaster for the State of Mississippi (FEMA-1604-DR) dated August 29, 2005, and to incorporated municipalities, districts or other water organizations located in such counties; however, the interest on the loans shall not be forgiven for a period of more than twenty-four (24) months and the maturity of the loans shall not be extended for a period of more than forty-eight (48) months.

SOURCES: Laws, 1995, ch. 521, §§ 1-3; Laws, 1996, ch. 542, § 1; Laws, 1998, ch. 375, § 1; Laws, 2000, ch. 595, § 1; reenacted without change, Laws, 2001, ch. 420, § 7; Laws, 2002, ch. 399, § 1; Laws, 2006, ch. 545, § 1; Laws, 2007, ch. 514, § 8; Laws, 2007, ch. 583, § 1; reenacted without change, Laws, 2010, ch. 494, § 3; reenacted without change, Laws, 2010, ch. 505, § 7, eff from and after May 1, 2010. See Editor's Note.

Joint Legislative Committee Note — Section 3 of ch. 494, Laws of 2010, effective from and after passages (approved April 7, 2010), amended this section. Section 7 of ch. 505, Laws of 2010, effective July 1, 2010 (approved April 8, 2010) but amended by ch. 556, § 1, to be effective from and after May 1, 2010, reenacted the section without change. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Editor's Note — Laws of 2010, ch. 556, § 1, provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Amendment Notes — The first 2010 amendment (ch. 494), in (2)(a), in the third through fifth sentences, added the exception; in (2)(b), in the third and fourth sentences, added the exception; and in (2)(h), added the exception in the first sentence, and added the last sentence.

The second 2010 amendment (ch. 505) reenacted the section without change.

§ 41-3-17. Power to make and publish rules and regulations [Repealed effective June 30, 2014].

SOURCES: Codes, 1892, § 2273; 1906, § 2489; Hemingway's 1917, § 4838; 1930, § 4875; 1942, § 7031; Laws, 1968, ch. 441, § 3; reenacted without change, Laws, 1982, ch. 494, § 7; reenacted and amended, Laws, 1990, ch. 568, § 7; reenacted without change, Laws, 1994, ch. 462, § 7; reenacted, Laws, 1995, ch. 363, § 7; Laws, 1996, ch. 516, § 22; reenacted without change, Laws, 2001, ch. 420, § 8; reenacted without change, Laws, 2007, ch. 514, § 9; reenacted without change, Laws, 2010, ch. 505, § 8, eff from and after May 1, 2010. See Editor's Note.

Editor's Note — This section was reenacted without change by Laws of 2010, ch. 505, effective from and after July 1, 2010 (amended by ch. 556 § 1, to be effective from and after May 1, 2010. See below.) Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Laws of 2010, ch. 556, § 1, provides:

“SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

“Section 18. This act shall take effect and be in force from and after May 1, 2010.”

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 41-3-18. Assessment of fees [Repealed effective June 30, 2014].

SOURCES: Laws, 1986, ch. 371, § 2; Laws, 1988, ch. 395, § 5; Laws, 1989, ch. 313, § 1; Laws, 1989, ch. 547, § 1; reenacted, Laws, 1990, ch. 568, § 8; Laws, 1991, ch. 606, § 1; reenacted without change, Laws, 1994, ch. 462, § 8; reenacted, Laws, 1995, ch. 363, § 8; Laws, 1997, ch. 427, § 1; reenacted without change, Laws, 2001, ch. 420, § 9; reenacted and amended, Laws, 2007, ch. 514, § 10; Laws, 2008, ch. 315, § 1; Laws, 2009, ch. 331, § 1; reenacted without change, Laws, 2010, ch. 505, § 9, eff from and after May 1, 2010. See Editor's Note.

Editor's Note — This section was reenacted without change by Laws of 2010, ch. 505, effective from and after July 1, 2010 (amended by ch. 556 § 1, to be effective from and after May 1, 2010. See below.) Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Laws of 2010, ch. 556, § 1, provides:

“SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

“Section 18. This act shall take effect and be in force from and after May 1, 2010.”

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 41-3-19. Report to the Governor [Repealed effective June 30, 2014].

SOURCES: Codes, 1892, § 2272; 1906, § 2488; Hemingway's 1917, § 4837; 1930, § 4874; 1942, § 7030; reenacted and amended, Laws, 1982, ch. 494, § 8; reenacted, Laws, 1990, ch. 568, § 9; reenacted without change, Laws, 1994, ch. 462, § 9; reenacted, Laws, 1995, ch. 363, § 9; reenacted without change, Laws, 2001, ch. 420, § 10; reenacted without change, Laws, 2007, ch. 514, § 11; reenacted without change, Laws, 2010, ch. 505, § 10, eff from and after May 1, 2010. See Editor's Note.

Editor's Note — This section was reenacted without change by Laws of 2010, ch. 505, effective from and after July 1, 2010 (amended by ch. 556 § 1, to be effective from and after May 1, 2010. See below.) Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Laws of 2010, ch. 556, § 1, provides:

“SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

“Section 18. This act shall take effect and be in force from and after May 1, 2010.”

Amendment Notes — The 2010 amendment reenacted the section without change.

§ 41-3-20. Repeal of Sections 41-3-1.1 through 41-3-19.

Sections 41-3-1.1, 41-3-3, 41-3-4, 41-3-5.1, 41-3-6, 41-3-15, 41-3-16, 41-3-17, 41-3-18 and 41-3-19, which create the reconstituted State Board of Health, establish the position of Executive Officer of the State Department of Health and establish the State Department of Health and prescribe its powers and duties, shall stand repealed on June 30, 2014.

SOURCES: Laws, 1994, ch. 462, § 11; Laws, 1995, ch. 363, § 10; Laws, 2001, ch. 420, § 11; Laws, 2007, ch. 514, § 1; Laws, 2010, ch. 505, § 11, eff from and after May 1, 2010. See Editor's Note.

Editor's Note — This section was amended by Laws of 2010, ch. 505, § 11, effective from and after July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1, which provides:

“SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

“Section 18. This act shall take effect and be in force from and after May 1, 2010.”

Amendment Notes — The 2010 amendment deleted (1) and (2), which were the repealers for Sections 41-3-1 and 41-3-5, and the (3) designation; and extended the date of the repealer for §§41-3-1.1, 41-3-3, 41-3-4, 41-3-5.1, 41-3-6, 41-3-15, 41-3-16, 41-3-17, 41-3-18 and 41-3-19 by substituting “June 30, 2014” for “June 30, 2010.”

§ 41-3-22. Mississippi State Public Health Laboratory named the Dr. F.E. “Ed” Thompson, Jr., Mississippi State Public Health Laboratory.

The Mississippi State Public Health Laboratory, located at 570 East Woodrow Wilson in Jackson, Mississippi, shall be named the Dr. F.E. “Ed” Thompson, Jr., Mississippi State Public Health Laboratory. The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the Dr. F.E. “Ed” Thompson, Jr., Mississippi State Public Health Laboratory, which states the background, accomplishments and public health service to the state and nation of Ed Thompson, M.D., M.P.H.

SOURCES: Laws, 2010, ch. 305, § 1, eff from and after passage (approved Feb. 23, 2010.)

§ 41-3-61. Legislative findings about patient-centered medical homes; State Board of Health to adopt guidelines applicable to physician practices, nurse practitioner practices and physician assistant practices that incorporate principles of patient-centered medical home.

(1) The Legislature makes the following findings:

(a) There are patient programs that provide a whole-person orientation that includes care for all stages of life, including acute care, chronic care, preventive services and end-of-life care;

(b) A patient-centered medical home must have Health Information Exchange compliant records, electronically integrated with electronic patient health records, and use practice-based disease management applications to facilitate and measure quality of care at the point of care;

(c) A patient in a patient-centered medical home actively participates in health care decision making, and feedback from the patient is sought to ensure that the expectations of the patient are being met;

(d) Care in a patient-centered medical home is coordinated across all elements of the health care system and the patient's community to assure that the patient receives the indicated care when and where the patient needs the care in a culturally appropriate manner;

(e) Multiple studies have demonstrated that when minorities have a medical home, racial and ethnic disparities in terms of medical access disappear and the costs of health care decrease;

(f) The American Academy of Pediatrics, the American Academy of Family Physicians, the American College of Physicians, and the American Osteopathic Association, representing more than three hundred thirty thousand (330,000) physicians across the country, have developed Joint Principles of the Patient-Centered Medical Home that describe the characteristics of the patient-centered medical home;

(g) The National Committee for Quality Assurance is developing a patient-centered medical home designation program for physician practices that meets specified criteria; and

(h) The Federal Tax Relief and Health Care Act calls for a three-year medical home demonstration project to be conducted in eight (8) states.

(2) The State Board of Health shall adopt guidelines applicable to physician practices, nurse practitioner practices and physician assistant practices in Mississippi that incorporate the principles of the patient-centered medical home, using all resources available to the board.

SOURCES: Laws, 2010, ch. 402, § 1, eff from and after July 1, 2010.

§ 41-3-63. “Mary D. Osborne Building” renamed the “Dr. Alton B. Cobb — Mary D. Osborne State Public Health Building.”

The “Mary D. Osborne Building” located at 570 East Woodrow Wilson Drive, Jackson, Mississippi, shall be renamed the “Dr. Alton B. Cobb — Mary

D. Osborne State Public Health Building.” The Department of Finance and Administration shall prepare or have prepared a distinctive plaque, to be placed in a prominent place within the Dr. Alton Cobb — Mary D. Osborne State Public Health Building which states the background, accomplishments and public health service of Dr. Cobb and Mary Osborne to the State of Mississippi.

SOURCES: Laws, 2010, ch. 505, § 15, eff from and after May 1, 2010. See Editor’s Note.

Editor’s Note — This section was enacted by Laws of 2010, ch. 505, § 15, effective July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1, which provides:

“SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

“Section 18. This act shall take effect and be in force from and after May 1, 2010.”

MEDICAL SERVICES FOR UNINSURED

SEC.
41-3-101. Provision of free medical services to those uninsured and unable to pay.

§ 41-3-101. Provision of free medical services to those uninsured and unable to pay.

The State Department of Health is authorized to contract with the Mississippi State Medical Association or any other party for the purpose of establishing a statewide, district, county or local pilot program, on a pilot program basis, for providing needed medical services at no charge to persons who have no form of health insurance and are unable to pay for such medical services. Any such pilot program shall be conditioned upon the availability of funds obtained for such purpose from public or private sources. Under such program, the department shall set the criteria for eligibility to receive such free medical services and, through the county health departments, shall determine which individuals are eligible to receive such services.

SOURCES: Laws, 1990, ch. 544, § 1; Laws, 2010, ch. 505, § 13, eff from and after May 1, 2010. See Editor’s Note.

Editor’s Note — This section was amended by Laws of 2010, ch. 505, § 13, effective from and after July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1 which provides:

“SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

“Section 18. This act shall take effect and be in force from and after May 1, 2010.”

Amendment Notes — The 2010 amendment, in the first sentence, inserted “or any other party,” “district, county or local pilot” and “on a pilot program basis”; added the second sentence, and deleted the former last two sentences, which dealt with duties of the Mississippi State Medical Association in relation to identifying and soliciting physicians for the statewide program and payment of related administrative costs.

CHAPTER 4

Department of Mental Health

SEC.

- 41-4-1. Declaration of goal; promulgation of regulations to ensure certain core mental health services are provided throughout the state.
- 41-4-2. Purpose of chapter.
- 41-4-3. State Board of Mental Health.
- 41-4-5. State Department of Mental Health.
- 41-4-7. Powers and duties of board [Paragraphs (c) and (f) repealed effective July 1, 2013].
- 41-4-8. Falsification of diagnosis of Medicaid-eligible client for mental health benefits.
- 41-4-11. Abolition of certain agencies, and transfer of authority, personnel and property to state board of mental health.
- 41-4-23. Security guards and campus police at mental health or intellectual disability facilities.

§ 41-4-1. Declaration of goal; promulgation of regulations to ensure certain core mental health services are provided throughout the state.

(1) The goal of the Rose Isabel Williams Mental Health Reform Act of 2011 is to reform the current Mississippi mental health delivery system so that necessary services, supports and operational structures for all its citizens with mental illness and/or alcohol and drug dependence and/or comorbidity, whether children, youth or adults, are accessible and delivered preferably in the communities where these citizens live. To accomplish this goal, this act provides that initially certain core services as defined in subsection (2) of this section should be available to residents of each county in the state. These services may be provided by community mental health/intellectual disability centers. In order to determine what services are available, the State Department of Mental Health is directed to survey the community mental health/intellectual disability centers, and the community mental health/intellectual disability centers are directed to report what services they are currently providing in each county. This act does not require any community mental health/intellectual disability center to provide any service. This act is not independent authority for any program not otherwise authorized.

(2) The State Board of Mental Health is authorized and empowered to promulgate regulations to ensure that core adult mental health services, child mental health services, intellectual/developmental disability services, and substance abuse prevention and treatment/rehabilitation services are provided throughout the state through the regional mental health/intellectual disability commissions and centers or through other providers. The State Board of Mental Health is directed to give priority to crisis services and crisis stabilization unit services provided twenty-four (24) hours a day, seven (7) days a week, where trained emergency-crisis response staff triage referrals and respond in a timely and adequate manner to diffuse a current personal crisis situation.

SOURCES: Laws, 1974, ch. 567, § 1; Laws, 2010, ch. 476, § 17; Laws, 2011, ch. 501, § 2, eff from and after July 1, 2011.

Editor's Note — Laws of 2009, ch. 552, § 1, as amended by Laws of 2010, ch. 513, § 1, provides:

“SECTION 1. (1) There is created a Joint Legislative Study Committee to study and make recommendations for improving the mental health system in Mississippi. The committee shall, at a minimum, examine the following topics:

“(a) The current delivery system of mental health services by state, regional and local public entities;

“(b) The structure of the State Department of Mental Health, including the makeup of the State Board of Mental Health and the qualifications of the executive director of the department;

“(c) The delivery of mental health services through a community-based system rather than an institutional-based system, focusing on delivery through the community mental health centers;

“(d) The disparity of services and programs within the different community mental health regions as they are currently comprised;

“(e) The options and solutions for ongoing and long-term financing of the community mental health system;

“(f) The organizational structure of the community mental health system, including the makeup of the commissions and the governing authority of each community mental health region; and

“(g) Any other matters of importance relating to the delivery of mental health services in the state.

“(2) The joint committee shall be composed of the following ten (10) members:

“(a) The Chairman of the House Public Health and Human Services Committee and the Chairman of the Senate Public Health and Welfare Committee, who will be the cochairmen of the joint committee;

“(b) The Chairman of the House Appropriations Committee, or his designee;

“(c) The Chairman of the Senate Appropriations Committee, or his designee;

“(d) Three (3) senators to be appointed by the Lieutenant Governor; and

“(e) Three (3) representatives to be appointed by the Speaker of the House.

“(3) Appointments shall be made within thirty (30) days after the effective date of this section. The first meeting of the committee shall be held on a day to be designated jointly by the Speaker of the House and the Lieutenant Governor. A majority of the members of the committee shall constitute a quorum. In the adoption of rules, resolutions and reports, an affirmative vote of a majority of the members of each house shall be required.

“(4) Members of the committee shall be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session, but only if specifically authorized by the Senate Rules Committee or the House Management Committee, as the case may be; however, no per diem or expense for attending meetings of the committee may be paid while the Legislature is in session. Members of the committee may receive per diem and expenses when the Legislature is in session but in recess under the terms of a concurrent resolution, or in recess during a special session, but only if specifically authorized by the Senate Rules Committee or the House Management Committee, as the case may be.

“(5) The committee shall make an initial report of its findings and recommendations to the Legislature not later than December 1, 2009. The committee shall continue in existence and study the issues specified under this section and shall make a report of its findings and recommendations not later than January 2011, including any recommended legislation. At the time of submission of its final report, the committee shall be dissolved.

“(6) (a) The Lieutenant Governor and the Speaker of the House of Representatives may jointly appoint not more than twelve (12) members to an advisory council to the joint committee. The members of the advisory committee appointed in 2009 shall continue to serve in 2010-2011 as long as the committee continues in existence.

“(b) The members of the advisory council shall either be engaged professionally in rendering mental health services or general medical services or be consumers of mental health services or representatives of those consumers.

“(c) The advisory council may meet with the Joint Legislative Study Committee and may hold special meetings as deemed necessary.”

Laws of 2011, ch. 501, § 1, provides:

“SECTION 1. This act shall be known and may be cited as the ‘Rose Isabel Williams Mental Health Reform Act of 2011.’”

For provisions of this section as the section appeared prior to amendment by ch. 501, Laws of 2011, see § 41-4-2.

Amendment Notes — The 2010 amendment substituted “for persons of this state with mental illness, emotional disturbance, alcoholism, drug dependence, and an intellectual disability” for “for the mentally ill, emotionally disturbed, alcoholic, drug dependent, and mentally retarded persons of this state” and “intellectual disability services” for “mental retardation services.”

The 2011 amendment rewrote the section.

Cross References — State board of mental health, acting through strategic planning and best practices committee, to Implement system of performance measures for services specified in subsection (2) of this section, see § 41-4-7.

Annual operational plan required by § 41-4-7 to include listing of services specified in this section that will be provided and those that won't be provided, see § 41-19-33.

§ 41-4-2. Purpose of chapter.

The purpose of this chapter is to coordinate, develop, improve, plan for, and provide all services for persons of this state with mental illness, emotional disturbance, alcoholism, drug dependence, and an intellectual disability; to promote, safeguard and protect human dignity, social well-being and general welfare of these persons under the cohesive control of one (1) coordinating and responsible agency so that mental health and intellectual disability services and facilities may be uniformly provided more efficiently and economically to any resident of the State of Mississippi; and further to seek means for the prevention of these disabilities.

SOURCES: Laws, 2011, ch. 501, § 3, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 501, § 1, provides:

“SECTION 1. This act shall be known and may be cited as the ‘Rose Isabel Williams Mental Health Reform Act of 2011.’”

The provisions of this section as enacted by Section 3 of Chapter 501, Laws of 2011, are identical to the provisions of Section 41-4-1 as it appeared prior to amendment by Section 2 of Chapter 501, Laws of 2011.

§ 41-4-3. State Board of Mental Health.

(1) There is created a State Board of Mental Health, referred to in this chapter as “board,” consisting of nine (9) members, to be appointed by the Governor, with the advice and consent of the Senate, each of whom shall be a

qualified elector. One (1) member shall be appointed from each congressional district as presently constituted; and four (4) members shall be appointed from the state at large, one (1) of whom shall be a licensed medical doctor who is a psychiatrist, one (1) of whom shall hold a Ph.D. degree and be a licensed clinical psychologist, one (1) of whom shall be a licensed medical doctor, and one (1) of whom shall be a social worker with experience in the mental health field.

No more than two (2) members of the board shall be appointed from any one (1) congressional district as presently constituted.

Each member of the initial board shall serve for a term of years represented by the number of his congressional district; two (2) state at large members shall serve for a term of six (6) years; two (2) state at large members shall serve for a term of seven (7) years; subsequent appointments shall be for seven-year terms and the Governor shall fill any vacancy for the unexpired term.

The board shall elect a chairman whose term of office shall be one (1) year and until his successor shall be elected.

(2) Each board member shall be entitled to a per diem as is authorized by law and all actual and necessary expenses, including mileage as provided by law, incurred in the discharge of official duties.

(3) The board shall hold regular meetings quarterly and such special meetings deemed necessary, except that no action shall be taken unless there is present a quorum of at least five (5) members.

SOURCES: Laws, 1974, ch. 567, § 2; Laws, 1980, ch. 560, § 16; Laws, 2010, ch. 548, § 11, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in the first sentence of (1), inserted “in this chapter,” and made minor stylistic changes; and substituted “shall hold regular meetings quarterly” for “shall hold regular meetings monthly” in (3).

§ 41-4-5. State Department of Mental Health.

There is created the State Department of Mental Health, herein referred to as “department,” which shall consist of four (4) or more divisions, among them the Division of Intellectual Disabilities, the Division of Alcohol and Drug Misuse, the Division of Mental Health, and the Division of Administration, Planning and Coordination, and such other divisions as the board deems appropriate.

SOURCES: Laws, 1974, ch. 567, § 3; Laws, 2010, ch. 476, § 18, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “Division of Intellectual Disabilities” for “division of mental retardation” and made minor stylistic changes.

§ 41-4-7. Powers and duties of board [Paragraphs (c) and (f) repealed effective July 1, 2013].

The State Board of Mental Health shall have the following powers and duties:

(a) To appoint a full-time Executive Director of the Department of Mental Health, who shall be employed by the board and shall serve as executive secretary to the board. The first director shall be a duly licensed physician with special interest and competence in psychiatry, and shall possess a minimum of three (3) years' experience in clinical and administrative psychiatry. Subsequent directors shall possess at least a master's degree or its equivalent, and shall possess at least ten (10) years' administrative experience in the field of mental health. The salary of the executive director shall be determined by the board;

(b) To appoint a Medical Director for the Department of Mental Health. The medical director shall provide clinical oversight in the implementation of evidence-based and best practices; provide clinical leadership in the integration of mental health, intellectual disability and addiction services with community partners in the public and private sectors; and provide oversight regarding standards of care. The medical director shall serve at the will and pleasure of the board, and will undergo an annual review of job performance and future service to the department;

(c) **[Repealed effective July 1, 2013].** — To establish a Strategic Planning and Best Practices Committee (committee), which shall consist of fifteen (15) members as follows:

- (i) Three (3) members of the State Board of Mental Health;
- (ii) The Chairman of the Department of Psychiatry at the University of Mississippi Medical Center;
- (iii) The Executive Director of the Division of Medicaid in the Office of the Governor;

(iv) Five (5) appointees of the Attorney General as follows:

1. One (1) director of a community mental health center that is not a member of the Mississippi Association of Community Mental Health Centers; and

2. Four (4) directors of community mental health centers that are members of the Mississippi Association of Community Mental Health Centers.

(v) Five (5) appointees of the Governor as follows:

1. One (1) representative of a nonprofit mental health advocacy group;

2. One (1) consumer or family member of a consumer of mental health services;

3. One (1) representative from a separate, private, nonprofit provider of a continuum of mental health services;

4. Two (2) individuals knowledgeable in the field of mental health and/or with experience in business management or public administration.

All appointed members of the Strategic Planning and Best Practices Committee shall be appointed to three-year terms and may be reappointed.

The Department of Mental Health shall provide professional and technical support to the committee, including the services of the department's medical director, and its planning staff. Additionally, the committee shall be authorized to seek grants from public and private sources to conduct the necessary studies and evaluations to support the committee in carrying out its responsibilities. The committee may also seek the assistance of the state institutions of higher learning, the State Department of Health, the Division of Medicaid, the State Department of Education, any community mental health center, and any other state agency whose expertise may be helpful to the committee.

This paragraph (c) shall stand repealed from and after July 1, 2013;

(d) To develop a system of strategic planning for the development of services for persons with mental illness, persons with developmental disabilities and other clients of the public mental health system. Such strategic planning program shall require that the board, acting through the Strategic Planning and Best Practices Committee, perform the following functions respecting the delivery of services:

(i) Establish measures for determining the efficiency and effectiveness of the services specified in Section 41-4-1(2);

(ii) Conducting studies of community-based care in other jurisdictions to determine which services offered in these jurisdictions have the potential to provide the citizens of Mississippi with more effective and efficient community-based care;

(iii) Evaluating the efficiency and effectiveness of the services specified in Section 41-4-1(2);

(iv) Recommending to the Legislature by January 1, 2014, any necessary additions, deletions or other changes necessary to the services specified in Section 41-4-1(2);

(v) Implementing by July 1, 2012, a system of performance measures for the services specified in Section 41-4-1(2);

(vi) Recommending to the Legislature any changes that the department believes are necessary to the current laws addressing civil commitment;

(vii) Conducting any other activities necessary to the evaluation and study of the services specified in Section 41-4-1(2);

(viii) Assisting in conducting all necessary strategic planning for the delivery of all other services of the department. Such planning shall be conducted so as to produce a single strategic plan for the services delivered by the public mental health system and shall establish appropriate mission statements, goals, objectives and performance indicators for all programs and services of the public mental health system. For services other than those specified in Section 41-4-1(2), the committee shall recommend to the State Board of Mental Health a strategic plan that the board may adopt or modify;

(e) To set up state plans for the purpose of controlling and treating any and all forms of mental and emotional illness, alcoholism, drug misuse and developmental disabilities;

(f) **[Repealed effective July 1, 2013].** — To supervise, coordinate and establish standards for all operations and activities of the state related to mental health and providing mental health services. Nothing in this chapter shall preclude the services of a psychiatric/mental health nurse practitioner in accordance with an established nurse practitioner/physician protocol. A physician, licensed psychologist, psychiatric/mental health nurse practitioner in accordance with an established nurse practitioner/physician protocol, physician assistant, licensed professional counselor, licensed marriage and family therapists, or licensed clinical social worker shall certify each client's record annually after seeing the client in person or by telemedicine, and more often if medically indicated by physically visiting the client and certifying same in the record. The board shall have the authority to develop and implement all standards and plans and shall have the authority to establish appropriate actions, including financially punitive actions, to ensure enforcement of these established standards, in accordance with the Administrative Procedures Law (Section 25-43-1 et seq.). The regional community mental health/intellectual disability centers shall comply with all of the board's established standards that are applicable to those centers, and the board may withhold any state funds that otherwise would be allocated or paid to any of those centers that does not comply with the board's established standards. This paragraph (f) shall stand repealed on July 1, 2013;

(g) To enter into contracts with any other state or federal agency, or with any private person, organization or group capable of contracting, if it finds such action to be in the public interest;

(h) To collect reasonable fees for its services; however, if it is determined that a person receiving services is unable to pay the total fee, the department shall collect any amount such person is able to pay;

(i) To certify, coordinate and establish minimum standards and establish minimum required services, as specified in Section 41-4-1(2), for regional mental health and intellectual disability commissions and other community service providers for community or regional programs and services in adult mental health, children and youth mental health, intellectual disabilities, alcoholism, drug misuse, developmental disabilities, compulsive gambling, addictive disorders and related programs throughout the state. Such regional mental health and intellectual disability commissions and other community service providers shall, on or before July 1 of each year, submit an annual operational plan to the State Department of Mental Health for approval or disapproval based on the minimum standards and minimum required services established by the department for certification and itemize the services specified in Section 41-4-1(2). As part of the annual operation plan required by this paragraph (i) submitted by any regional community mental health center or by any other reasonable certification

deemed acceptable by the department, the community mental health center shall state those services specified in Section 41-4-1(2) that it will provide and also those services that it will not provide. If the department finds deficiencies in the plan of any regional commission or community service provider based on the minimum standards and minimum required services established for certification, the department shall give the regional commission or community service provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. After the six-month probationary period, if the department determines that the regional commission or community service provider still does not meet the minimum standards and minimum required services established for certification, the department may remove the certification of the commission or provider and from and after July 1, 2011, the commission or provider shall be ineligible for state funds from Medicaid reimbursement or other funding sources for those services. However, the department shall not mandate a standard or service, or decertify a regional commission or community service provider for not meeting a standard or service, if the standard or service does not have funding appropriated by the Legislature or have a state, federal or local funding source identified by the department. No county shall be required to levy millage to provide a mandated standard or service above the minimum rate required by Section 41-19-39. After the six-month probationary period, the department may identify an appropriate community service provider to provide any core services in that county that are not provided by a community mental health center. However, the department shall not offer reimbursement or other accommodations to a community service provider of core services that were not offered to the decertified community mental health center for the same or similar services. The State Board of Mental Health shall promulgate rules and regulations necessary to implement the provisions of this paragraph (i), in accordance with the Administrative Procedures Law (Section 25-43-1.101 et seq.);

(j) To establish and promulgate reasonable minimum standards for the construction and operation of state and all Department of Mental Health certified facilities, including reasonable minimum standards for the admission, diagnosis, care, treatment, transfer of patients and their records, and also including reasonable minimum standards for providing day care, outpatient care, emergency care, inpatient care and follow-up care, when such care is provided for persons with mental or emotional illness, an intellectual disability, alcoholism, drug misuse and developmental disabilities;

(k) To implement best practices for all services specified in Section 41-4-1(2), and to establish and implement all other services delivered by the Department of Mental Health. To carry out this responsibility, the board shall require the department to establish a division responsible for developing best practices based on a comprehensive analysis of the mental health environment to determine what the best practices for each service are. In

developing best practices, the board shall consider the cost and benefits associated with each practice with a goal of implementing only those practices that are cost-effective practices for service delivery. Such best practices shall be utilized by the board in establishing performance standards and evaluations of the community mental health centers' services required by paragraph (d) of this section;

(l) To assist community or regional programs consistent with the purposes of this chapter by making grants and contracts from available funds;

(m) To establish and collect reasonable fees for necessary inspection services incidental to certification or compliance;

(n) To accept gifts, trusts, bequests, grants, endowments or transfers of property of any kind;

(o) To receive monies coming to it by way of fees for services or by appropriations;

(p) To serve as the single state agency in receiving and administering any and all funds available from any source for the purpose of service delivery, training, research and education in regard to all forms of mental illness, intellectual disabilities, alcoholism, drug misuse and developmental disabilities, unless such funds are specifically designated to a particular agency or institution by the federal government, the Mississippi Legislature or any other grantor;

(q) To establish mental health holding centers for the purpose of providing short-term emergency mental health treatment, places for holding persons awaiting commitment proceedings or awaiting placement in a state mental health facility following commitment, and for diverting placement in a state mental health facility. These mental health holding facilities shall be readily accessible, available statewide, and be in compliance with emergency services' minimum standards. They shall be comprehensive and available to triage and make appropriate clinical disposition, including the capability to access inpatient services or less restrictive alternatives, as needed, as determined by medical staff. Such facility shall have medical, nursing and behavioral services available on a twenty-four-hour-a-day basis. The board may provide for all or part of the costs of establishing and operating the holding centers in each district from such funds as may be appropriated to the board for such use, and may participate in any plan or agreement with any public or private entity under which the entity will provide all or part of the costs of establishing and operating a holding center in any district;

(r) To certify/license case managers, mental health therapists, intellectual disability therapists, mental health/intellectual disability program administrators, addiction counselors and others as deemed appropriate by the board. Persons already professionally licensed by another state board or agency are not required to be certified/licensed under this section by the Department of Mental Health. The department shall not use professional titles in its certification/licensure process for which there is an independent licensing procedure. Such certification/licensure shall be valid only in the

state mental health system, in programs funded and/or certified by the Department of Mental Health, and/or in programs certified/licensed by the State Department of Health that are operated by the state mental health system serving persons with mental illness, an intellectual disability, a developmental disability or addictions, and shall not be transferable;

(s) To develop formal mental health worker qualifications for regional mental health and intellectual disability commissions and other community service providers. The State Personnel Board shall develop and promulgate a recommended salary scale and career ladder for all regional mental health/intellectual disability center therapists and case managers who work directly with clients. The State Personnel Board shall also develop and promulgate a career ladder for all direct care workers employed by the State Department of Mental Health;

(t) The employees of the department shall be governed by personnel merit system rules and regulations, the same as other employees in state services;

(u) To establish such rules and regulations as may be necessary in carrying out the provisions of this chapter, including the establishment of a formal grievance procedure to investigate and attempt to resolve consumer complaints;

(v) To grant easements for roads, utilities and any other purpose it finds to be in the public interest;

(w) To survey statutory designations, building markers and the names given to mental health/intellectual disability facilities and proceedings in order to recommend deletion of obsolete and offensive terminology relative to the mental health/intellectual disability system. Based upon a recommendation of the executive director, the board shall have the authority to name/rename any facility operated under the auspices of the Department of Mental Health for the sole purpose of deleting such terminology;

(x) To ensure an effective case management system directed at persons who have been discharged from state and private psychiatric hospitals to ensure their continued well-being in the community;

(y) To develop formal service delivery standards designed to measure the quality of services delivered to community clients, as well as the timeliness of services to community clients provided by regional mental health/intellectual disability commissions and other community services providers;

(z) To establish regional state offices to provide mental health crisis intervention centers and services available throughout the state to be utilized on a case-by-case emergency basis. The regional services director, other staff and delivery systems shall meet the minimum standards of the Department of Mental Health;

(aa) To require performance contracts with community mental health/intellectual disability service providers to contain performance indicators to measure successful outcomes, including diversion of persons from inpatient psychiatric hospitals, rapid/timely response to emergency cases, client satisfaction with services and other relevant performance measures;

(bb) To enter into interagency agreements with other state agencies, school districts and other local entities as determined necessary by the department to ensure that local mental health service entities are fulfilling their responsibilities to the overall state plan for behavioral services;

(cc) To establish and maintain a toll-free grievance reporting telephone system for the receipt and referral for investigation of all complaints by clients of state and community mental health/intellectual disability facilities;

(dd) To establish a peer review/quality assurance evaluation system that assures that appropriate assessment, diagnosis and treatment is provided according to established professional criteria and guidelines;

(ee) To develop and implement state plans for the purpose of assisting with the care and treatment of persons with Alzheimer's disease and other dementia. This plan shall include education and training of service providers, caregivers in the home setting and others who deal with persons with Alzheimer's disease and other dementia, and development of adult day care, family respite care and counseling programs to assist families who maintain persons with Alzheimer's disease and other dementia in the home setting. No agency shall be required to provide any services under this section until such time as sufficient funds have been appropriated or otherwise made available by the Legislature specifically for the purposes of the treatment of persons with Alzheimer's and other dementia;

(ff) Working with the advice and consent of the administration of Ellisville State School, to enter into negotiations with the Economic Development Authority of Jones County for the purpose of negotiating the possible exchange, lease or sale of lands owned by Ellisville State School to the Economic Development Authority of Jones County. It is the intent of the Mississippi Legislature that such negotiations shall ensure that the financial interest of the persons with an intellectual disability served by Ellisville State School will be held paramount in the course of these negotiations. The Legislature also recognizes the importance of economic development to the citizens of the State of Mississippi and Jones County, and encourages fairness to the Economic Development Authority of Jones County. Any negotiations proposed which would result in the recommendation for exchange, lease or sale of lands owned by Ellisville State School must have the approval of the State Board of Mental Health. The State Board of Mental Health may and has the final authority as to whether or not these negotiations result in the exchange, lease or sale of the properties it currently holds in trust for persons with an intellectual disability served at Ellisville State School.

If the State Board of Mental Health authorizes the sale of lands owned by Ellisville State School, as provided for under this paragraph (ff), the monies derived from the sale shall be placed into a special fund that is created in the State Treasury to be known as the "Ellisville State School Client's Trust Fund." The principal of the trust fund shall remain inviolate and shall never be expended. Any interest earned on the principal may be

expended solely for the benefits of clients served at Ellisville State School. The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the Mississippi Prepaid Affordable College Tuition Program under Section 37-155-9, and those investments shall be subject to the limitations prescribed by Section 37-155-9. Unexpended amounts remaining in the trust fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the trust fund shall be deposited to the credit of the trust fund. The administration of Ellisville State School may use any interest earned on the principal of the trust fund, upon appropriation by the Legislature, as needed for services or facilities by the clients of Ellisville State School. Ellisville State School shall make known to the Legislature, through the Legislative Budget Committee and the respective Appropriations Committees of the House and Senate, its proposed use of interest earned on the principal of the trust fund for any fiscal year in which it proposes to make expenditures thereof. The State Treasurer shall provide Ellisville State School with an annual report on the Ellisville State School Client's Trust Fund to indicate the total monies in the trust fund, interest earned during the year, expenses paid from the trust fund and such other related information.

Nothing in this section shall be construed as applying to or affecting mental health/intellectual disability services provided by hospitals as defined in Section 41-9-3(a), and/or their subsidiaries and divisions, which hospitals, subsidiaries and divisions are licensed and regulated by the Mississippi State Department of Health unless such hospitals, subsidiaries or divisions voluntarily request certification by the Mississippi State Department of Mental Health.

All new programs authorized under this section shall be subject to the availability of funds appropriated therefor by the Legislature;

(gg) Working with the advice and consent of the administration of Boswell Regional Center, to enter into negotiations with the Economic Development Authority of Simpson County for the purpose of negotiating the possible exchange, lease or sale of lands owned by Boswell Regional Center to the Economic Development Authority of Simpson County. It is the intent of the Mississippi Legislature that such negotiations shall ensure that the financial interest of the persons with an intellectual disability served by Boswell Regional Center will be held paramount in the course of these negotiations. The Legislature also recognizes the importance of economic development to the citizens of the State of Mississippi and Simpson County, and encourages fairness to the Economic Development Authority of Simpson County. Any negotiations proposed which would result in the recommendation for exchange, lease or sale of lands owned by Boswell Regional Center must have the approval of the State Board of Mental Health. The State Board of Mental Health may and has the final authority as to whether or not these negotiations result in the exchange, lease or sale of the properties it currently holds in trust for persons with an intellectual disability served at Boswell Regional Center. In any such exchange, lease or sale of such lands

owned by Boswell Regional Center, title to all minerals, oil and gas on such lands shall be reserved, together with the right of ingress and egress to remove same, whether such provisions be included in the terms of any such exchange, lease or sale or not.

If the State Board of Mental Health authorizes the sale of lands owned by Boswell Regional Center, as provided for under this paragraph (gg), the monies derived from the sale shall be placed into a special fund that is created in the State Treasury to be known as the "Boswell Regional Center Client's Trust Fund." The principal of the trust fund shall remain inviolate and shall never be expended. Any earnings on the principal may be expended solely for the benefits of clients served at Boswell Regional Center. The State Treasurer shall invest the monies of the trust fund in any of the investments authorized for the Mississippi Prepaid Affordable College Tuition Program under Section 37-155-9, and those investments shall be subject to the limitations prescribed by Section 37-155-9. Unexpended amounts remaining in the trust fund at the end of a fiscal year shall not lapse into the State General Fund, and any earnings on amounts in the trust fund shall be deposited to the credit of the trust fund. The administration of Boswell Regional Center may use any earnings on the principal of the trust fund, upon appropriation by the Legislature, as needed for services or facilities by the clients of Boswell Regional Center. Boswell Regional Center shall make known to the Legislature, through the Legislative Budget Committee and the respective Appropriations Committees of the House and Senate, its proposed use of the earnings on the principal of the trust fund for any fiscal year in which it proposes to make expenditures thereof. The State Treasurer shall provide Boswell Regional Center with an annual report on the Boswell Regional Center Client's Trust Fund to indicate the total monies in the trust fund, interest and other income earned during the year, expenses paid from the trust fund and such other related information.

Nothing in this section shall be construed as applying to or affecting mental health/intellectual disability services provided by hospitals as defined in Section 41-9-3(a), and/or their subsidiaries and divisions, which hospitals, subsidiaries and divisions are licensed and regulated by the Mississippi State Department of Health unless such hospitals, subsidiaries or divisions voluntarily request certification by the Mississippi State Department of Mental Health.

All new programs authorized under this section shall be subject to the availability of funds appropriated therefor by the Legislature;

(hh) Notwithstanding any other section of the code, the Board of Mental Health shall be authorized to fingerprint and perform a criminal history record check on every employee or volunteer. Every employee and volunteer shall provide a valid current social security number and/or driver's license number which shall be furnished to conduct the criminal history record check. If no disqualifying record is identified at the state level, fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check;

(ii) The Department of Mental Health shall have the authority for the development of a consumer friendly single point of intake and referral system within its service areas for persons with mental illness, an intellectual disability, developmental disabilities or alcohol or substance abuse who need assistance identifying or accessing appropriate services. The department will develop and implement a comprehensive evaluation procedure ensuring that, where appropriate, the affected person or their parent or legal guardian will be involved in the assessment and planning process. The department, as the point of intake and as service provider, shall have the authority to determine the appropriate institutional, hospital or community care setting for persons who have been diagnosed with mental illness, an intellectual disability, developmental disabilities and/or alcohol or substance abuse, and may provide for the least restrictive placement if the treating professional believes such a setting is appropriate, if the person affected or their parent or legal guardian wants such services, and if the department can do so with a reasonable modification of the program without creating a fundamental alteration of the program. The least restrictive setting could be an institution, hospital or community setting, based upon the needs of the affected person or their parent or legal guardian;

(jj) To have the sole power and discretion to enter into, sign, execute and deliver long-term or multiyear leases of real and personal property owned by the Department of Mental Health to and from other state and federal agencies and private entities deemed to be in the public's best interest. Any monies derived from such leases shall be deposited into the funds of the Department of Mental Health for its exclusive use. Leases to private entities shall be approved by the Department of Finance and Administration and all leases shall be filed with the Secretary of State;

(kk) To certify and establish minimum standards and minimum required services for county facilities used for housing, feeding and providing medical treatment for any person who has been involuntarily ordered admitted to a treatment center by a court of competent jurisdiction. The minimum standard for the initial assessment of those persons being housed in county facilities is for the assessment to be performed by a physician, preferably a psychiatrist, or by a nurse practitioner, preferably a psychiatric nurse practitioner. If the department finds deficiencies in any such county facility or its provider based on the minimum standards and minimum required services established for certification, the department shall give the county or its provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. After the six-month probationary period, if the department determines that the county or its provider still does not meet the minimum standards and minimum required services, the department may remove the certification of the county or provider and require the county to contract with another county having a certified facility to hold those persons for that period of time pending transportation and admission to a state treatment facility. Any cost incurred by a county receiving an involuntarily

committed person from a county with a decertified holding facility shall be reimbursed by the home county to the receiving county.

SOURCES: Laws, 1974, ch. 567, § 4; Laws, 1978, ch. 388, § 1; Laws, 1996, ch. 446, § 1; Laws, 1997, ch. 328, § 1; Laws, 1997, ch. 384, § 1; Laws, 1997, ch. 587, § 2; Laws, 1998, ch. 329, § 1; Laws, 1998, ch. 341, § 1; Laws, 1999, ch. 342, § 1; Laws, 2001, ch. 601, § 1; Laws, 2002, ch. 357, § 1; Laws, 2003, ch. 371, § 1; Laws, 2003, ch. 438, § 1; Laws, 2004, ch. 517, § 1; Laws, 2005, ch. 387, § 1; Laws, 2008, ch. 523, § 1; Laws, 2009, ch. 543, § 1; Laws, 2010, ch. 476, § 19; Laws, 2010, ch. 499, § 1; Laws, 2011, ch. 501, § 4; Laws, 2012, ch. 509, § 1, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 19 of ch. 476, Laws of 2010, effective upon passage (approved April 1, 2010), amended this section. Section 1 of ch. 499, Laws of 2010, effective July 1, 2010 (approved April 7, 2010), also amended this section. As set out above, this section reflects the language of Section 1 of ch. 499, Laws of 2010, which contains language that specifically provides that it supersedes § 41-4-7 as amended by Chapter 476, Laws of 2010.

Editor's Note — Laws of 2011, ch. 447, § 2, provides:

“SECTION 2. The State Board of Mental Health shall convey without compensation to the Mississippi Transportation Commission all of its right, title and interest in certain real property hereinafter labeled as Warranty, and also shall convey without compensation that certain real property for a temporary easement, hereinafter labeled as Temporary Easement, both conveyances being located in Rankin County, Mississippi, described more specifically as follows:

“WARRANTY

“INDEXING INSTRUCTIONS: Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ and the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

“Parcel No. 1

“Commence at a found $\frac{3}{8}$ ” rebar marking the Northeast corner of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi, having grid coordinates N=996596.77460, E=2382140.83400, and run South 62 degrees 40 minutes 14 seconds West a distance of 3,848.56 feet to a point being located 80 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 22+00 as shown on the right-of-way acquisition map for Federal Aid Project No. (105414/201000), said point being the Point of Beginning for the following description:

“• From said Point of Beginning run South 73 degrees 33 minutes 29 seconds East along the northern proposed right-of-way line of S.R. 468 a distance of 1,300.00 feet to a point being located 80 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 35+00;

“• Thence continue South 51 degrees 45 minutes 24 seconds East along said northern proposed right-of-way line a distance of 107.70 feet to the northern present right-of-way line of S.R. 468 and to a point being located 40 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 36+00;

“• Thence North 73 degrees 33 minutes 29 seconds West along said northern present right-of-way line a distance of 1,500.00 feet to said northern proposed right-of-way line of S.R. 468 and to a point being located 40 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 21+00;

“• Thence North 84 degrees 38 minutes 25 seconds East along said northern proposed right-of-way line a distance of 107.70 feet to the Point of Beginning.

“The above-described parcel of land contains 1.26 acres (56,000 sq. ft.), more or less, and is situated in the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ and the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

“Parcel No. 2

“Commence at a found $\frac{3}{8}$ ” rebar marking the Northeast corner of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi, having grid coordinates N=996596.77460, E=2382140.83400, and run South 57 degrees 08 minutes 24 seconds West a distance of 3,801.81 feet to a point being located 140 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 25+00 as shown on the right-of-way acquisition map for Federal Aid Project No. (105414/201000), said point being the Point of Beginning for the following description:

“• From said Point of Beginning run North 59 degrees 31 minutes 19 seconds West along the southern proposed right-of-way line of S.R. 468 a distance of 412.31 feet to the southern present right-of-way line of S.R. 468 and to a point being located 40 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 21+00;

“• Thence South 73 degrees 33 minutes 29 seconds East along said southern present right-of-way line a distance of 1,500.00 feet to said southern proposed right-of-way line of S.R. 468 and to a point being located 40 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 36+00;

“• Thence South 88 degrees 00 minutes 25 seconds West along said northern proposed right-of-way line a distance of 316.23 feet to a point being located 140 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 33+00;

“• Thence continue North 73 degrees 33 minutes 29 seconds West along said southern proposed right-of-way line a distance of 800.00 feet to the Point of Beginning.

“The above-described parcel of land contains 2.64 acres (115,000 sq. ft.), more or less, and is situated in the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ and the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

“Parcel No. 1 and Parcel No. 2 contain an aggregate of 3.90 acres (171,000 sq. ft.), more or less.

“TEMPORARY EASEMENT

“INDEXING INSTRUCTIONS: Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ and the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

“Parcel No. 1

“Commence at a found $\frac{3}{8}$ ” rebar marking the Northeast corner of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi, having grid coordinates N=996596.77460, E=2382140.83400, and run South 61 degrees 08 minutes 25 seconds West a distance of 3,646.09 feet to a point on the temporary easement, said point being located 150.65 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 24+14.50 as shown on the right-of-way acquisition map for Federal Aid Project No. (105414/201000), said point being the Point of Beginning for the following description:

“• From said Point of Beginning run South 73 degrees 33 minutes 29 seconds East along said easement line a distance of 353.71 feet to a point being located 150.65 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 27+68.21;

“• Thence continue South 16 degrees 26 minutes 31 seconds West along said easement line a distance of 70.65 feet to the northern proposed right-of-way line of S.R. 468 and to a point being located 80 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 27+68.21;

“• Thence North 73 degrees 33 minutes 29 seconds West along said northern proposed right-of-way line a distance of 353.71 feet to a point on said easement line, said point being located 80 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 24+14.50;

“• Thence on and along said easement line, North 16 degrees 26 minutes 31 seconds East a distance of 70.65 feet to the Point of Beginning.

“The above-described parcel of land contains 0.57 acres (24,990 sq. ft.), more or less, and is situated in the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

“Parcel No. 2

“Commence at a found $\frac{3}{8}$ ” rebar marking the Northeast corner of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi, having grid coordinates N=996596.77460, E=2382140.83400, and run South 55 degrees 31 minutes 19 seconds West a distance of 3,305.53 feet to a point on the temporary easement, said point being located 176.40 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 28+95.24 as shown on the right-of-way acquisition map for Federal Aid Project No. (105414/201000), said point being the Point of Beginning for the following description:

“• From said Point of Beginning run South 73 degrees 33 minutes 29 seconds East along said easement line a distance of 290.26 feet to a point being located 176.40 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 31+85.50;

“• Thence continue South 16 degrees 26 minutes 31 seconds West along said easement line a distance of 96.40 feet to the northern proposed right-of-way line of S.R. 468 and to a point being located 80 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 31+85.50;

“• Thence North 73 degrees 33 minutes 29 seconds West along said northern proposed right-of-way line a distance of 290.26 feet to a point on said easement line, said point being located 80 feet left of, as measured perpendicularly from, the project centerline of S.R. 468 at station 28+95.24;

“• Thence on and along said easement line, North 16 degrees 26 minutes 31 seconds East a distance of 96.40 feet to the Point of Beginning.

“The above-described parcel of land contains 0.64 acres (27,981 sq. ft.), more or less, and is situated in the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ and the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

“Parcel No. 3

“Commence at a found $\frac{3}{8}$ ” rebar marking the Northeast corner of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi, having grid coordinates N=996596.77460, E=2382140.83400, and run South 57 degrees 02 minutes 11 seconds West a distance of 3,941.24 feet to a point on the temporary easement, said point being located 250.36 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 24+14.50 as shown on the right-of-way acquisition map for Federal Aid Project No. (105414/201000), said point being the Point of Beginning for the following description:

“• From said Point of Beginning run North 16 degrees 26 minutes 31 seconds East along said easement line a distance of 131.73 feet to the southern present right-of-way line of S.R. 468 and to a point being located 118.63 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 24+14.50;

“• Thence South 59 degrees 31 minutes 30 seconds East along said southern present right-of-way line a distance of 88.13 feet;

“• Thence continue South 73 degrees 33 minutes 29 seconds East along said southern present right-of-way line a distance of 240.56 feet to a point on said easement line, said point being located 140 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 27+40.56;

“• Thence on and along said easement line, South 16 degrees 26 minutes 31 seconds West a distance of 110.36 feet to a point being located 250.36 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 27+40.56;

“• Thence continue on and along said easement line, North 73 degrees 33 minutes 29 seconds West a distance of 326.06 feet to the Point of Beginning.

“The above-described parcel of land contains 0.85 acres (36,898 sq. ft.), more or less, and is situated in the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

“Parcel No. 4

“Commence at a found $\frac{3}{8}$ ” rebar marking the Northeast corner of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi, having grid coordinates N=996596.77460, E=2382140.83400, and run South 51 degrees 32 minutes 56 seconds West a distance of 3,658.14 feet to a point on the temporary easement, said point being located 250.29 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 28+75.25 as shown on the right-of-way acquisition map for Federal Aid Project No. (105414/201000), said point being the Point of Beginning for the following description:

“• From said Point of Beginning run North 16 degrees 26 minutes 31 seconds East along said easement line a distance of 110.29 feet to the southern present right-of-way line of S.R. 468 and to a point being located 140 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 28+75.25;

“• Thence South 73 degrees 33 minutes 29 seconds East along said southern present right-of-way line a distance of 310.25 feet to a point on said easement line, said point being located 140 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 31+85.50;

“• Thence on and along said easement line, South 16 degrees 26 minutes 31 seconds West a distance of 110.29 feet to a point being located 250.29 feet right of, as measured perpendicularly from, the project centerline of S.R. 468 at station 31+85.50;

“• Thence continue on and along said easement line, North 73 degrees 33 minutes 29 seconds West a distance of 310.25 feet to the Point of Beginning.

“The above-described parcel of land contains 0.79 acres (34,217 sq. ft.), more or less, and is situated in the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 35, Township 5 North, Range 2 East, Rankin County, Mississippi.

“Parcel No. 1, Parcel No. 2, Parcel No. 3 and Parcel No. 4 contain an aggregate of 2.85 acres (124,086 sq. ft.), more or less.”

Laws of 2011, ch. 501, § 1, effective July 1, 2011, provides:

“SECTION 1. This act shall be known and may be cited as the ‘Rose Isabel Williams Mental Health Reform Act of 2011.’”

Amendment Notes — The first 2010 amendment (ch. 476) substituted “intellectual disability” for “mental retardation” or similar language throughout the section; in (n), substituted “mental health/intellectual disability program” for “mental health/retardation program” and “serving persons with mental illness, an intellectual disability, a developmental disability or addictions” for “serving the mentally ill, mentally retarded, developmentally disabled or persons with addictions”; in (o) through (cc), substituted “mental health/intellectual disability” for “mental health/retardation”; and near the end of the first paragraphs in (bb) and (cc), substituted “for persons with an intellectual disability” for “for citizens with mental retardation.”

The second 2010 amendment (ch. 499), in (c), added the third, fourth and sixth sentences, and extended the date of the repealer for the paragraph by substituting “July 1, 2013” for “July 1, 2010”; throughout (f) through (ee), substituted “an intellectual disability” for “mental retardation” or similar language; in the last sentence in (n), substituted “serving persons with mental illness, an intellectual disability, a developmental disability or addictions” for “serving the mentally ill, mentally retarded, developmentally disabled or persons with addictions”; and in the last sentence in (bb) and the next-to-last sentence in (cc), substituted “persons” for “citizens.”

The 2011 amendment rewrote the section.

The 2012 amendment rewrote the third sentence in (f); and added the second sentence in (kk).

Cross References — Annual operational plan required by this section to include listing of services specified in § 41-4-1 that will be provided and those that won't be provided, see § 41-19-33.

Ellisville State School generally, see §§ 41-19-101 et seq.

Boswell Regional Center generally, see §§ 41-19-201 et seq.

§ 41-4-8. Falsification of diagnosis of Medicaid-eligible client for mental health benefits.

(1) A person shall not make, present or cause to be made or presented a material falsification of diagnosis of a Medicaid-eligible client for a claim for Medicaid mental health services benefits, knowing the diagnosis and claim to be false, fictitious or fraudulent.

(2) A person who violates this section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than five (5) years, or by a fine of not more than One Hundred Thousand Dollars (\$100,000.00), or both.

(3) For purposes of subsection (1), if a regional mental health/intellectual disability center submits claims for Medicaid reimbursement or other funds from the Department of Mental Health, the lack of a certified physician or psychologist evaluation of the client for such claim as required under Section 41-4-7(c) shall be deemed a material falsification of diagnosis by the person responsible for making or presenting such claim.

SOURCES: Laws, 1997, ch. 587, § 5; Laws, 2010, ch. 476, § 20, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “mental health/intellectual disability center” for “mental health/retardation center” in (3).

§ 41-4-11. Abolition of certain agencies, and transfer of authority, personnel and property to state board of mental health.

(1) On July 1, 1974, the Board of Trustees of Mental Institutions of the State of Mississippi and the Mississippi Interagency Commission on Mental Illness and Mental Retardation shall be abolished. The authority now vested in the State Board of Health relating to mental health, drug misuse and alcoholism is rescinded as of July 1, 1974.

(2) As of July 1, 1974, the Mississippi State Hospital at Whitfield, the East Mississippi State Hospital at Meridian, the Ellisville State School at Ellisville, the North Mississippi Regional Center at Oxford, and any other mental or intellectual disability facility that may be established, shall become subject to the jurisdiction and control of the State Department of Mental Health.

(3) All duties, responsibilities, authority, power, assets, liabilities, contractual rights and obligations, and property rights, whether accruing or vesting in the abolished agencies before or after April 23, 1974, are vested in the State Board of Mental Health.

(4) The board upon recommendation of the executive director shall select the heads of divisions and institutions necessary to carry out the provisions of this chapter who shall have qualifications appropriate to the duties they must discharge.

(5) Employees of the abolished agencies or divisions of agencies holding positions on June 30, 1974, shall be employees of the State Department of Mental Health on July 1, 1974. The board may combine or abolish positions as necessary to carry out the provisions of this chapter.

(6) Subject to the provisions and limitations of this chapter as expressly set forth in Section 41-4-13, all offices, services, programs and other activities of the abolished agencies or divisions of agencies are made offices, services, programs or other activities of the State Department of Mental Health, and the board is authorized to reorganize such offices, services, programs or other activities so as to achieve economy and efficiency; and the board may establish bureaus, divisions, hospitals, clinics, mental health centers, homes for persons with an intellectual disability, or other facilities for providing mental health services if it finds such action to be in the public interest.

SOURCES: Laws, 1974, ch. 567, § 6(1-6); Laws, 1992, ch. 336, § 23; Laws, 2010, ch. 476, § 21, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “intellectual disability facility” for “retardation facility” in (2); substituted “homes for persons with an intellectual disability” for “homes for the mentally retarded” in (6); and made minor stylistic changes.

§ 41-4-23. Security guards and campus police at mental health or intellectual disability facilities.

(a) It will be the duty of the director of any mental health or intellectual disability facility under the direction or control of the State Department of Mental Health to designate certain employees as security guards and campus police. The names, qualifications, and training of such campus police will be reported to the Executive Director of the State Department of Mental Health and spread upon the official minutes of the State Board of Mental Health.

All campus police, subsequent to employment but prior to performing duties as campus police, will attend and satisfactorily complete the training course required for law enforcement officers at the Law Enforcement Officer's Training Academy or an equivalent facility. Campus police training may be at the expense of the Department of Mental Health and conditioned upon work repayment by the employee in accordance with educational leave regulations promulgated by the State Board of Mental Health. Failure to meet repayment obligations may result in revocation of law enforcement certification in the same manner provided in Section 37-101-291. A complete record of all law enforcement training of each employee will be maintained in each employee's record of employment. A master file of all such employees' training will be kept in the central office of the State Department of Mental Health.

(b) All campus police will be duly constituted peace officers with powers and duties of a constable but such authority may be exercised only on the premises of institutions under the control of the State Department of Mental Health and public property immediately adjacent to such premises. Each person designated as a security guard or campus police will enter into bond in the penalty amount of not less than Ten Thousand Dollars (\$10,000.00), the premium for which shall be paid by the facility employing such security guard or campus police.

(c) All security guards and campus police will exercise their authority while in performance of their duty on any of the facilities under the direction or control of the State Department of Mental Health and public property immediately adjacent to such facilities; will be required to dress in uniforms prescribed by the State Board of Mental Health; and will be authorized to carry weapons. Employees designated as campus police shall be duly sworn and vested with authority to bear arms and make arrests, and shall exercise primarily the responsibilities of the prevention and detection of crime, the apprehension of criminals, and the enforcement of the ordinances and policies of the Department of Mental Health, a political subdivision of the State of Mississippi. Employees designated as campus police shall be considered law enforcement officers within the meaning of Section 45-6-3.

SOURCES: Laws, 1976, ch. 478; Laws, 2002, ch. 359, § 1; Laws, 2010, ch. 476, § 22, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “or intellectual disability facility” for “or mental retardation facility” in the first sentence in (a).

CHAPTER 5

Governing Authorities for State Hospitals and Institutions

Board of Trustees of Mental Institutions 41-5-31

BOARD OF TRUSTEES OF MENTAL INSTITUTIONS

Sec.
41-5-44. Establishment of nursing home for patients with an intellectual disability. 41-5-31

§ 41-5-44. Establishment of nursing home for patients with an intellectual disability.

(a) The Board of Mental Health is directed, if such is determined to be feasible by the board, to establish, equip, staff and operate nursing homes for patients with an intellectual disability. Those nursing homes shall be equipped, staffed and operated in accordance with the minimum standards established by the State Department of Health, and shall meet all the requirements for the admission and care of patients eligible for Medicare and

Medicaid assistance as required by Titles XVIII and XIX of the Social Security Act, as amended.

(b) Admission to the nursing homes shall be limited to those patients who have been admitted to the mental institutions or intellectual disability centers or eligible for admission to the mental institutions or intellectual disability centers according to state laws and who have been certified as eligible for Medicare or Medicaid assistance as determined by the provisions of Mississippi laws governing the administration of Titles XVIII and XIX of the Social Security Act, as amended.

(c) The purpose of this section is to provide a nursing facility within the environs of the former Tuberculosis Sanatorium of Mississippi, thereby providing a needed service to eligible patients by making use of available buildings and resources for their care and constituting an additional service rendered by the institution.

SOURCES: Laws, 1973, ch. 497, § 1; Laws, 1980, ch. 493, § 12; Laws, 1983, ch. 522, § 51; Laws, 1986, ch. 437, § 12; Laws, 2010, ch. 476, § 23, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment, in (a), substituted “mentally retarded patients” for “patients with an intellectual disability” and made minor stylistic changes; and in (b), twice substituted “intellectual disability centers” for “mental retardation centers.”

CHAPTER 7

Hospital and Health Care Commissions

Health Care Certificate of Need Law of 1979	41-7-171
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HEALTH CARE CERTIFICATE OF NEED LAW OF 1979

SEC.	
41-7-173.	Definitions.
41-7-191.	Certificate of need; activities for which certificate is required.
41-7-201.	Direct appeal of final order pertaining to certificate of need to the Mississippi Supreme Court.
41-7-205.	Nonsubstantive projects; exemption from formal review.

§ 41-7-173. Definitions.

For the purposes of Section 41-7-171 et seq., the following words shall have the meanings ascribed herein, unless the context otherwise requires:

(a) “Affected person” means (i) the applicant; (ii) a person residing within the geographic area to be served by the applicant’s proposal; (iii) a person who regularly uses health care facilities or HMOs located in the geographic area of the proposal which provide similar service to that which is proposed; (iv) health care facilities and HMOs which have, prior to receipt of the application under review, formally indicated an intention to provide

service similar to that of the proposal being considered at a future date; (v) third-party payers who reimburse health care facilities located in the geographical area of the proposal; or (vi) any agency that establishes rates for health care services or HMOs located in the geographic area of the proposal.

(b) “Certificate of need” means a written order of the State Department of Health setting forth the affirmative finding that a proposal in prescribed application form, sufficiently satisfies the plans, standards and criteria prescribed for such service or other project by Section 41-7-171 et seq., and by rules and regulations promulgated thereunder by the State Department of Health.

(c)(i) “Capital expenditure,” when pertaining to defined major medical equipment, shall mean an expenditure which, under generally accepted accounting principles consistently applied, is not properly chargeable as an expense of operation and maintenance and which exceeds One Million Five Hundred Thousand Dollars (\$1,500,000.00).

(ii) “Capital expenditure,” when pertaining to other than major medical equipment, shall mean any expenditure which under generally accepted accounting principles consistently applied is not properly chargeable as an expense of operation and maintenance and which exceeds Two Million Dollars (\$2,000,000.00) for a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure service, or series of such procedures, or which exceeds Five Million Dollars (\$5,000,000.00) for any other type of expenditure.

(iii) A “capital expenditure” shall include the acquisition, whether by lease, sufferance, gift, devise, legacy, settlement of a trust or other means, of any facility or part thereof, or equipment for a facility, the expenditure for which would have been considered a capital expenditure if acquired by purchase. Transactions which are separated in time but are planned to be undertaken within twelve (12) months of each other and are components of an overall plan for meeting patient care objectives shall, for purposes of this definition, be viewed in their entirety without regard to their timing.

(iv) In those instances where a health care facility or other provider of health services proposes to provide a service in which the capital expenditure for major medical equipment or other than major medical equipment or a combination of the two (2) may have been split between separate parties, the total capital expenditure required to provide the proposed service shall be considered in determining the necessity of certificate of need review and in determining the appropriate certificate of need review fee to be paid. The capital expenditure associated with facilities and equipment to provide services in Mississippi shall be considered regardless of where the capital expenditure was made, in state or out of state, and regardless of the domicile of the party making the capital expenditure, in state or out of state.

(d) “Change of ownership” includes, but is not limited to, inter vivos gifts, purchases, transfers, lease arrangements, cash and/or stock transac-

tions or other comparable arrangements whenever any person or entity acquires or controls a majority interest of the facility or service. Changes of ownership from partnerships, single proprietorships or corporations to another form of ownership are specifically included. However, "change of ownership" shall not include any inherited interest acquired as a result of a testamentary instrument or under the laws of descent and distribution of the State of Mississippi.

(e) "Commencement of construction" means that all of the following have been completed with respect to a proposal or project proposing construction, renovating, remodeling or alteration:

(i) A legally binding written contract has been consummated by the proponent and a lawfully licensed contractor to construct and/or complete the intent of the proposal within a specified period of time in accordance with final architectural plans which have been approved by the licensing authority of the State Department of Health;

(ii) Any and all permits and/or approvals deemed lawfully necessary by all authorities with responsibility for such have been secured; and

(iii) Actual bona fide undertaking of the subject proposal has commenced, and a progress payment of at least one percent (1%) of the total cost price of the contract has been paid to the contractor by the proponent, and the requirements of this paragraph (e) have been certified to in writing by the State Department of Health.

Force account expenditures, such as deposits, securities, bonds, et cetera, may, in the discretion of the State Department of Health, be excluded from any or all of the provisions of defined commencement of construction.

(f) "Consumer" means an individual who is not a provider of health care as defined in paragraph (q) of this section.

(g) "Develop," when used in connection with health services, means to undertake those activities which, on their completion, will result in the offering of a new institutional health service or the incurring of a financial obligation as defined under applicable state law in relation to the offering of such services.

(h) "Health care facility" includes hospitals, psychiatric hospitals, chemical dependency hospitals, skilled nursing facilities, end-stage renal disease (ESRD) facilities, including freestanding hemodialysis units, intermediate care facilities, ambulatory surgical facilities, intermediate care facilities for the mentally retarded, home health agencies, psychiatric residential treatment facilities, pediatric skilled nursing facilities, long-term care hospitals, comprehensive medical rehabilitation facilities, including facilities owned or operated by the state or a political subdivision or instrumentality of the state, but does not include Christian Science sanatoriums operated or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts. This definition shall not apply to facilities for the private practice, either independently or by incorporated medical groups, of physicians, dentists or health care professionals except where

such facilities are an integral part of an institutional health service. The various health care facilities listed in this paragraph shall be defined as follows:

(i) "Hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. Such term does not include psychiatric hospitals.

(ii) "Psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of persons with mental illness.

(iii) "Chemical dependency hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical and related services for the diagnosis and treatment of chemical dependency such as alcohol and drug abuse.

(iv) "Skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(v) "End-stage renal disease (ESRD) facilities" means kidney disease treatment centers, which includes freestanding hemodialysis units and limited care facilities. The term "limited care facility" generally refers to an off-hospital-premises facility, regardless of whether it is provider or nonprovider operated, which is engaged primarily in furnishing maintenance hemodialysis services to stabilized patients.

(vi) "Intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require health-related care and services (above the level of room and board).

(vii) "Ambulatory surgical facility" means a facility primarily organized or established for the purpose of performing surgery for outpatients and is a separate identifiable legal entity from any other health care facility. Such term does not include the offices of private physicians or dentists, whether for individual or group practice, and does not include any abortion facility as defined in Section 41-75-1(f).

(viii) "Intermediate care facility for the mentally retarded" means an intermediate care facility that provides health or rehabilitative services in a planned program of activities to persons with an intellectual disability, also including, but not limited to, cerebral palsy and other conditions covered by the Federal Developmentally Disabled Assistance and Bill of Rights Act, Public Law 94-103.

(ix) "Home health agency" means a public or privately owned agency or organization, or a subdivision of such an agency or organization, properly authorized to conduct business in Mississippi, which is primarily engaged in providing to individuals at the written direction of a licensed physician, in the individual's place of residence, skilled nursing services provided by or under the supervision of a registered nurse licensed to practice in Mississippi, and one or more of the following services or items:

1. Physical, occupational or speech therapy;
2. Medical social services;
3. Part-time or intermittent services of a home health aide;
4. Other services as approved by the licensing agency for home health agencies;
5. Medical supplies, other than drugs and biologicals, and the use of medical appliances; or
6. Medical services provided by an intern or resident-in-training at a hospital under a teaching program of such hospital.

Further, all skilled nursing services and those services listed in items 1 through 4 of this subparagraph (ix) must be provided directly by the licensed home health agency. For purposes of this subparagraph, "directly" means either through an agency employee or by an arrangement with another individual not defined as a health care facility.

This subparagraph (ix) shall not apply to health care facilities which had contracts for the above services with a home health agency on January 1, 1990.

(x) "Psychiatric residential treatment facility" means any nonhospital establishment with permanent licensed facilities which provides a twenty-four-hour program of care by qualified therapists, including, but not limited to, duly licensed mental health professionals, psychiatrists, psychologists, psychotherapists and licensed certified social workers, for emotionally disturbed children and adolescents referred to such facility by a court, local school district or by the Department of Human Services, who are not in an acute phase of illness requiring the services of a psychiatric hospital, and are in need of such restorative treatment services. For purposes of this subparagraph, the term "emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

1. An inability to learn which cannot be explained by intellectual, sensory or health factors;
2. An inability to build or maintain satisfactory relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems. An establishment furnishing primarily domiciliary care is not within this definition.

(xi) “Pediatric skilled nursing facility” means an institution or a distinct part of an institution that is primarily engaged in providing to inpatients skilled nursing care and related services for persons under twenty-one (21) years of age who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(xii) “Long-term care hospital” means a freestanding, Medicare-certified hospital that has an average length of inpatient stay greater than twenty-five (25) days, which is primarily engaged in providing chronic or long-term medical care to patients who do not require more than three (3) hours of rehabilitation or comprehensive rehabilitation per day, and has a transfer agreement with an acute care medical center and a comprehensive medical rehabilitation facility. Long-term care hospitals shall not use rehabilitation, comprehensive medical rehabilitation, medical rehabilitation, sub-acute rehabilitation, nursing home, skilled nursing facility, or sub-acute care facility in association with its name.

(xiii) “Comprehensive medical rehabilitation facility” means a hospital or hospital unit that is licensed and/or certified as a comprehensive medical rehabilitation facility which provides specialized programs that are accredited by the Commission on Accreditation of Rehabilitation Facilities and supervised by a physician board certified or board eligible in physiatry or other doctor of medicine or osteopathy with at least two (2) years of training in the medical direction of a comprehensive rehabilitation program that:

1. Includes evaluation and treatment of individuals with physical disabilities;
2. Emphasizes education and training of individuals with disabilities;
3. Incorporates at least the following core disciplines:
 - (i) Physical Therapy;
 - (ii) Occupational Therapy;
 - (iii) Speech and Language Therapy;
 - (iv) Rehabilitation Nursing; and
4. Incorporates at least three (3) of the following disciplines:
 - (i) Psychology;
 - (ii) Audiology;
 - (iii) Respiratory Therapy;
 - (iv) Therapeutic Recreation;
 - (v) Orthotics;
 - (vi) Prosthetics;
 - (vii) Special Education;
 - (viii) Vocational Rehabilitation;
 - (ix) Psychotherapy;
 - (x) Social Work;
 - (xi) Rehabilitation Engineering.

These specialized programs include, but are not limited to: spinal cord injury programs, head injury programs and infant and early childhood development programs.

(i) "Health maintenance organization" or "HMO" means a public or private organization organized under the laws of this state or the federal government which:

(i) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage;

(ii) Is compensated (except for copayments) for the provision of the basic health care services listed in subparagraph (i) of this paragraph to enrolled participants on a predetermined basis; and

(iii) Provides physician services primarily:

1. Directly through physicians who are either employees or partners of such organization; or

2. Through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(j) "Health service area" means a geographic area of the state designated in the State Health Plan as the area to be used in planning for specified health facilities and services and to be used when considering certificate of need applications to provide health facilities and services.

(k) "Health services" means clinically related (i.e., diagnostic, treatment or rehabilitative) services and includes alcohol, drug abuse, mental health and home health care services.

(l) "Institutional health services" shall mean health services provided in or through health care facilities and shall include the entities in or through which such services are provided.

(m) "Major medical equipment" means medical equipment designed for providing medical or any health-related service which costs in excess of One Million Five Hundred Thousand Dollars (\$1,500,000.00). However, this definition shall not be applicable to clinical laboratories if they are determined by the State Department of Health to be independent of any physician's office, hospital or other health care facility or otherwise not so defined by federal or state law, or rules and regulations promulgated thereunder.

(n) "State Department of Health" shall mean the state agency created under Section 41-3-15, which shall be considered to be the State Health Planning and Development Agency, as defined in paragraph (t) of this section.

(o) "Offer," when used in connection with health services, means that it has been determined by the State Department of Health that the health care facility is capable of providing specified health services.

(p) "Person" means an individual, a trust or estate, partnership, corporation (including associations, joint-stock companies and insurance companies), the state or a political subdivision or instrumentality of the state.

(q) “Provider” shall mean any person who is a provider or representative of a provider of health care services requiring a certificate of need under Section 41-7-171 et seq., or who has any financial or indirect interest in any provider of services.

(r) “Secretary” means the Secretary of Health and Human Services, and any officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(s) “State Health Plan” means the sole and official statewide health plan for Mississippi which identifies priority state health needs and establishes standards and criteria for health-related activities which require certificate of need review in compliance with Section 41-7-191.

(t) “State Health Planning and Development Agency” means the agency of state government designated to perform health planning and resource development programs for the State of Mississippi.

SOURCES: Laws, 1979, ch. 451, § 2; Laws, 1980, ch. 493, § 1; Laws, 1981, ch. 484, § 18; Laws, 1982, ch. 482, § 1; Laws, 1983, ch. 484, § 1; Laws, 1984, ch. 472, § 2; Laws, 1985, ch. 534, § 1; Laws, 1986, ch. 437, § 34; Laws, 1987, ch. 515, § 1; Laws, 1989, ch. 530, § 1; Laws, 1990, ch. 510, § 1; Laws, 1993, ch. 609, § 9; Laws, 1994, ch. 649, § 15; Laws, 1999, ch. 583, § 1; Laws, 2010, ch. 476, § 24; Laws, 2010, ch. 505, § 16, eff from and after May 1, 2010. See Editor’s Note.

Joint Legislative Committee Note — Section 24 of ch. 476, Laws of 2010, effective upon passage (approved April 1, 2010), amended this section. Section 16 of ch. 505, Laws of 2010, effective July 1, 2010 (approved April 8, 2010), but amended by ch. 556, § 1, to be effective from and after May 1, 2010, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

An error in a statutory reference at the end of (h)(viii) was corrected by substituting “Section 41-75-1(f)” for “Section 41-75-1(e).” The Joint Committee on Compilation, Revision and Publication of Legislation ratified the correction at its July 22, 2010, meeting.

Editor’s Note — This section was amended by Laws of 2010, ch. 505, § 16, effective from and after July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1 which provides:

“SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

“Section 18. This act shall take effect and be in force from and after May 1, 2010.”

Amendment Notes — The first 2010 amendment (ch. 476) substituted “treatment of persons with mental illness” for “treatment of mentally ill persons” in (h)(ii); and substituted “to persons with an intellectual disability” for “to the mentally retarded” in (h)(viii).

The second 2010 amendment (ch. 505) made a minor stylistic change in (c)(i); and added “for a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure service, or series of such procedures, or which exceeds Five Million Dollars (\$5,000,000) for any other type of expenditure” in (c)(ii).

JUDICIAL DECISIONS

1. Certificate of need.

Residential nursing facility was allowed to exist without ever having had a certificate of need (CON) issued because the facility existed before CONs were required. No other authority was granted by a CON. *Zumwalt v. Jones County Bd. of Supervisors*, 19 So. 3d 672 (Miss. 2009).

Revocation of two certificates of need (CONs) for a hospital was not arbitrary and capricious because a hospital did not do anything that qualified as the com-

mencement of construction or a good faith effort to obligate an approved expenditure; very little money had been spent in furtherance of a project, and the evidence showed that the hospital focused its efforts into the relocation of the project, rather than completion of the project contemplated by the CONs. *Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health*, 29 So. 3d 775 (Miss. Ct. App. 2009).

§ 41-7-185. Powers.

JUDICIAL DECISIONS

1. Rule-making authority.

Pursuant to the plain language of Miss. Code Ann. § 41-7-195, the Mississippi State Department of Health did not have the authority to grant an applicant an extension of its Certificate of Need (CON)

after the CON had expired, nor the authority to promulgate a rule allowing holders of expired CONS the right to request an extension of their CONs. *Dialysis Solution, LLC v. Miss. State Dep't of Health*, 31 So. 3d 1204 (Miss. 2010).

§ 41-7-187. Certificate of need program.

JUDICIAL DECISIONS

2. Rule-making authority.

Pursuant to the plain language of Miss. Code Ann. § 41-7-195, the Mississippi State Department of Health did not have the authority to grant an applicant an extension of its Certificate of Need (CON)

after the CON had expired, nor the authority to promulgate a rule allowing holders of expired CONS the right to request an extension of their CONs. *Dialysis Solution, LLC v. Miss. State Dep't of Health*, 31 So. 3d 1204 (Miss. 2010).

§ 41-7-191. Certificate of need; activities for which certificate is required.

(1) No person shall engage in any of the following activities without obtaining the required certificate of need:

(a) The construction, development or other establishment of a new health care facility, which establishment shall include the reopening of a health care facility that has ceased to operate for a period of sixty (60) months or more;

(b) The relocation of a health care facility or portion thereof, or major medical equipment, unless such relocation of a health care facility or portion thereof, or major medical equipment, which does not involve a capital expenditure by or on behalf of a health care facility, is within five thousand

two hundred eighty (5,280) feet from the main entrance of the health care facility;

(c) Any change in the existing bed complement of any health care facility through the addition or conversion of any beds or the alteration, modernizing or refurbishing of any unit or department in which the beds may be located; however, if a health care facility has voluntarily delicensed some of its existing bed complement, it may later relicense some or all of its delicensed beds without the necessity of having to acquire a certificate of need. The State Department of Health shall maintain a record of the delicensing health care facility and its voluntarily delicensed beds and continue counting those beds as part of the state's total bed count for health care planning purposes. If a health care facility that has voluntarily delicensed some of its beds later desires to relicense some or all of its voluntarily delicensed beds, it shall notify the State Department of Health of its intent to increase the number of its licensed beds. The State Department of Health shall survey the health care facility within thirty (30) days of that notice and, if appropriate, issue the health care facility a new license reflecting the new contingent of beds. However, in no event may a health care facility that has voluntarily delicensed some of its beds be reissued a license to operate beds in excess of its bed count before the voluntary delicensure of some of its beds without seeking certificate of need approval;

(d) Offering of the following health services if those services have not been provided on a regular basis by the proposed provider of such services within the period of twelve (12) months prior to the time such services would be offered:

- (i) Open-heart surgery services;
- (ii) Cardiac catheterization services;
- (iii) Comprehensive inpatient rehabilitation services;
- (iv) Licensed psychiatric services;
- (v) Licensed chemical dependency services;
- (vi) Radiation therapy services;
- (vii) Diagnostic imaging services of an invasive nature, i.e. invasive digital angiography;
- (viii) Nursing home care as defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h);
- (ix) Home health services;
- (x) Swing-bed services;
- (xi) Ambulatory surgical services;
- (xii) Magnetic resonance imaging services;
- (xiii) [Deleted]
- (xiv) Long-term care hospital services;
- (xv) Positron emission tomography (PET) services;

(e) The relocation of one or more health services from one physical facility or site to another physical facility or site, unless such relocation, which does not involve a capital expenditure by or on behalf of a health care facility, (i) is to a physical facility or site within five thousand two hundred

eighty (5,280) feet from the main entrance of the health care facility where the health care service is located, or (ii) is the result of an order of a court of appropriate jurisdiction or a result of pending litigation in such court, or by order of the State Department of Health, or by order of any other agency or legal entity of the state, the federal government, or any political subdivision of either, whose order is also approved by the State Department of Health;

(f) The acquisition or otherwise control of any major medical equipment for the provision of medical services; provided, however, (i) the acquisition of any major medical equipment used only for research purposes, and (ii) the acquisition of major medical equipment to replace medical equipment for which a facility is already providing medical services and for which the State Department of Health has been notified before the date of such acquisition shall be exempt from this paragraph; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

(g) Changes of ownership of existing health care facilities in which a notice of intent is not filed with the State Department of Health at least thirty (30) days prior to the date such change of ownership occurs, or a change in services or bed capacity as prescribed in paragraph (c) or (d) of this subsection as a result of the change of ownership; an acquisition for less than fair market value must be reviewed, if the acquisition at fair market value would be subject to review;

(h) The change of ownership of any health care facility defined in subparagraphs (iv), (vi) and (viii) of Section 41-7-173(h), in which a notice of intent as described in paragraph (g) has not been filed and if the Executive Director, Division of Medicaid, Office of the Governor, has not certified in writing that there will be no increase in allowable costs to Medicaid from revaluation of the assets or from increased interest and depreciation as a result of the proposed change of ownership;

(i) Any activity described in paragraphs (a) through (h) if undertaken by any person if that same activity would require certificate of need approval if undertaken by a health care facility;

(j) Any capital expenditure or deferred capital expenditure by or on behalf of a health care facility not covered by paragraphs (a) through (h);

(k) The contracting of a health care facility as defined in subparagraphs (i) through (viii) of Section 41-7-173(h) to establish a home office, subunit, or branch office in the space operated as a health care facility through a formal arrangement with an existing health care facility as defined in subparagraph (ix) of Section 41-7-173(h);

(l) The replacement or relocation of a health care facility designated as a critical access hospital shall be exempt from subsection (1) of this section so long as the critical access hospital complies with all applicable federal law and regulations regarding such replacement or relocation;

(m) Reopening a health care facility that has ceased to operate for a period of sixty (60) months or more, which reopening requires a certificate of need for the establishment of a new health care facility.

(2) The State Department of Health shall not grant approval for or issue a certificate of need to any person proposing the new construction of, addition to, or expansion of any health care facility defined in subparagraphs (iv) (skilled nursing facility) and (vi) (intermediate care facility) of Section 41-7-173(h) or the conversion of vacant hospital beds to provide skilled or intermediate nursing home care, except as hereinafter authorized:

(a) The department may issue a certificate of need to any person proposing the new construction of any health care facility defined in subparagraphs (iv) and (vi) of Section 41-7-173(h) as part of a life care retirement facility, in any county bordering on the Gulf of Mexico in which is located a National Aeronautics and Space Administration facility, not to exceed forty (40) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the health care facility that were authorized under this paragraph (a).

(b) The department may issue certificates of need in Harrison County to provide skilled nursing home care for Alzheimer's disease patients and other patients, not to exceed one hundred fifty (150) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facilities that were authorized under this paragraph (b).

(c) The department may issue a certificate of need for the addition to or expansion of any skilled nursing facility that is part of an existing continuing care retirement community located in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (c), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of beds that may be authorized under the authority of this paragraph (c) shall not exceed sixty (60) beds.

(d) The State Department of Health may issue a certificate of need to any hospital located in DeSoto County for the new construction of a skilled

nursing facility, not to exceed one hundred twenty (120) beds, in DeSoto County. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (d).

(e) The State Department of Health may issue a certificate of need for the construction of a nursing facility or the conversion of beds to nursing facility beds at a personal care facility for the elderly in Lowndes County that is owned and operated by a Mississippi nonprofit corporation, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (e).

(f) The State Department of Health may issue a certificate of need for conversion of a county hospital facility in Itawamba County to a nursing facility, not to exceed sixty (60) beds, including any necessary construction, renovation or expansion. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (f).

(g) The State Department of Health may issue a certificate of need for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in either Hinds, Madison or Rankin County, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the nursing facility that were authorized under this paragraph (g).

(h) The State Department of Health may issue a certificate of need for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in either Hancock, Harrison or Jackson County, not to exceed sixty (60) beds. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the facility that were authorized under this paragraph (h).

(i) The department may issue a certificate of need for the new construction of a skilled nursing facility in Leake County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (i), and if such skilled nursing facility at

any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 43-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (i) shall not exceed sixty (60) beds. If the skilled nursing facility authorized by the certificate of need issued under this paragraph is not constructed and fully operational within eighteen (18) months after July 1, 1994, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need, if it is still outstanding, and shall not issue a license for the skilled nursing facility at any time after the expiration of the eighteen-month period.

(j) The department may issue certificates of need to allow any existing freestanding long-term care facility in Tishomingo County and Hancock County that on July 1, 1995, is licensed with fewer than sixty (60) beds. For the purposes of this paragraph (j), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. From and after July 1, 1999, there shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the beds in the long-term care facilities that were authorized under this paragraph (j).

(k) The department may issue a certificate of need for the construction of a nursing facility at a continuing care retirement community in Lowndes County. The total number of beds that may be authorized under the authority of this paragraph (k) shall not exceed sixty (60) beds. From and after July 1, 2001, the prohibition on the facility participating in the Medicaid program (Section 43-13-101 et seq.) that was a condition of issuance of the certificate of need under this paragraph (k) shall be revised as follows: The nursing facility may participate in the Medicaid program from and after July 1, 2001, if the owner of the facility on July 1, 2001, agrees in writing that no more than thirty (30) of the beds at the facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than thirty (30) patients in the facility in any month or for any patient in the facility who is in a bed that is not Medicaid-certified. This written agreement by the owner of the facility shall be a condition of licensure of the facility, and the agreement shall be fully binding on any subsequent owner of the facility if the ownership of the facility is transferred at any time after July 1, 2001. After this written

agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the facility for participation in the Medicaid program. If the facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the written agreement.

(l) Provided that funds are specifically appropriated therefor by the Legislature, the department may issue a certificate of need to a rehabilitation hospital in Hinds County for the construction of a sixty-bed long-term care nursing facility dedicated to the care and treatment of persons with severe disabilities including persons with spinal cord and closed-head injuries and ventilator dependent patients. The provisions of Section 41-7-193(1) regarding substantial compliance with projection of need as reported in the current State Health Plan are hereby waived for the purpose of this paragraph.

(m) The State Department of Health may issue a certificate of need to a county-owned hospital in the Second Judicial District of Panola County for the conversion of not more than seventy-two (72) hospital beds to nursing facility beds, provided that the recipient of the certificate of need agrees in writing that none of the beds at the nursing facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement in the nursing facility in any day or for any patient in the nursing facility. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the nursing facility if the ownership of the nursing facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify any of the beds in the nursing facility for participation in the Medicaid program. If the nursing facility violates the terms of the written agreement by admitting or keeping in the nursing facility on a regular or continuing basis any patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the nursing facility, at the time that the department determines, after a hearing complying with due process, that the nursing facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced

within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. Provided, however, that if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(n) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Madison County, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (n), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (n) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. Provided, however, that if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(o) The department may issue a certificate of need for the new construction, addition or conversion of skilled nursing facility beds in Leake County,

provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (o), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The total number of nursing facility beds that may be authorized by any certificate of need issued under this paragraph (o) shall not exceed sixty (60) beds. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 2001, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 2001, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. Provided, however, that if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(p) The department may issue a certificate of need for the construction of a municipally owned nursing facility within the Town of Belmont in Tishomingo County, not to exceed sixty (60) beds, provided that the recipient of the certificate of need agrees in writing that the skilled nursing facility will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the skilled nursing facility who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the skilled nursing facility, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the skilled nursing facility will not participate in the

Medicaid program shall be a condition of the issuance of a certificate of need to any person under this paragraph (p), and if such skilled nursing facility at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the skilled nursing facility, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this paragraph and in the written agreement by the recipient of the certificate of need. The provision of Section 43-7-193(1) regarding substantial compliance of the projection of need as reported in the current State Health Plan is waived for the purposes of this paragraph. If the certificate of need authorized under this paragraph is not issued within twelve (12) months after July 1, 1998, the department shall deny the application for the certificate of need and shall not issue the certificate of need at any time after the twelve-month period, unless the issuance is contested. If the certificate of need is issued and substantial construction of the nursing facility beds has not commenced within eighteen (18) months after July 1, 1998, the State Department of Health, after a hearing complying with due process, shall revoke the certificate of need if it is still outstanding, and the department shall not issue a license for the nursing facility at any time after the eighteen-month period. Provided, however, that if the issuance of the certificate of need is contested, the department shall require substantial construction of the nursing facility beds within six (6) months after final adjudication on the issuance of the certificate of need.

(q)(i) Beginning on July 1, 1999, the State Department of Health shall issue certificates of need during each of the next four (4) fiscal years for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in each county in the state having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, in the manner provided in this paragraph (q). The total number of nursing facility beds that may be authorized by any certificate of need authorized under this paragraph (q) shall not exceed sixty (60) beds.

(ii) Subject to the provisions of subparagraph (v), during each of the next four (4) fiscal years, the department shall issue six (6) certificates of need for new nursing facility beds, as follows: During fiscal years 2000, 2001 and 2002, one (1) certificate of need shall be issued for new nursing facility beds in the county in each of the four (4) Long-Term Care Planning Districts designated in the fiscal year 1999 State Health Plan that has the highest need in the district for those beds; and two (2) certificates of need shall be issued for new nursing facility beds in the two (2) counties from the state at large that have the highest need in the state for those beds, when considering the need on a statewide basis and without regard to the

Long-Term Care Planning Districts in which the counties are located. During fiscal year 2003, one (1) certificate of need shall be issued for new nursing facility beds in any county having a need for fifty (50) or more additional nursing facility beds, as shown in the fiscal year 1999 State Health Plan, that has not received a certificate of need under this paragraph (q) during the three (3) previous fiscal years. During fiscal year 2000, in addition to the six (6) certificates of need authorized in this subparagraph, the department also shall issue a certificate of need for new nursing facility beds in Amite County and a certificate of need for new nursing facility beds in Carroll County.

(iii) Subject to the provisions of subparagraph (v), the certificate of need issued under subparagraph (ii) for nursing facility beds in each Long-Term Care Planning District during each fiscal year shall first be available for nursing facility beds in the county in the district having the highest need for those beds, as shown in the fiscal year 1999 State Health Plan. If there are no applications for a certificate of need for nursing facility beds in the county having the highest need for those beds by the date specified by the department, then the certificate of need shall be available for nursing facility beds in other counties in the district in descending order of the need for those beds, from the county with the second highest need to the county with the lowest need, until an application is received for nursing facility beds in an eligible county in the district.

(iv) Subject to the provisions of subparagraph (v), the certificate of need issued under subparagraph (ii) for nursing facility beds in the two (2) counties from the state at large during each fiscal year shall first be available for nursing facility beds in the two (2) counties that have the highest need in the state for those beds, as shown in the fiscal year 1999 State Health Plan, when considering the need on a statewide basis and without regard to the Long-Term Care Planning Districts in which the counties are located. If there are no applications for a certificate of need for nursing facility beds in either of the two (2) counties having the highest need for those beds on a statewide basis by the date specified by the department, then the certificate of need shall be available for nursing facility beds in other counties from the state at large in descending order of the need for those beds on a statewide basis, from the county with the second highest need to the county with the lowest need, until an application is received for nursing facility beds in an eligible county from the state at large.

(v) If a certificate of need is authorized to be issued under this paragraph (q) for nursing facility beds in a county on the basis of the need in the Long-Term Care Planning District during any fiscal year of the four-year period, a certificate of need shall not also be available under this paragraph (q) for additional nursing facility beds in that county on the basis of the need in the state at large, and that county shall be excluded in determining which counties have the highest need for nursing facility beds in the state at large for that fiscal year. After a certificate of need has been

issued under this paragraph (q) for nursing facility beds in a county during any fiscal year of the four-year period, a certificate of need shall not be available again under this paragraph (q) for additional nursing facility beds in that county during the four-year period, and that county shall be excluded in determining which counties have the highest need for nursing facility beds in succeeding fiscal years.

(vi) If more than one (1) application is made for a certificate of need for nursing home facility beds available under this paragraph (q), in Yalobusha, Newton or Tallahatchie County, and one (1) of the applicants is a county-owned hospital located in the county where the nursing facility beds are available, the department shall give priority to the county-owned hospital in granting the certificate of need if the following conditions are met:

1. The county-owned hospital fully meets all applicable criteria and standards required to obtain a certificate of need for the nursing facility beds; and

2. The county-owned hospital's qualifications for the certificate of need, as shown in its application and as determined by the department, are at least equal to the qualifications of the other applicants for the certificate of need.

(r)(i) Beginning on July 1, 1999, the State Department of Health shall issue certificates of need during each of the next two (2) fiscal years for the construction or expansion of nursing facility beds or the conversion of other beds to nursing facility beds in each of the four (4) Long-Term Care Planning Districts designated in the fiscal year 1999 State Health Plan, to provide care exclusively to patients with Alzheimer's disease.

(ii) Not more than twenty (20) beds may be authorized by any certificate of need issued under this paragraph (r), and not more than a total of sixty (60) beds may be authorized in any Long-Term Care Planning District by all certificates of need issued under this paragraph (r). However, the total number of beds that may be authorized by all certificates of need issued under this paragraph (r) during any fiscal year shall not exceed one hundred twenty (120) beds, and the total number of beds that may be authorized in any Long-Term Care Planning District during any fiscal year shall not exceed forty (40) beds. Of the certificates of need that are issued for each Long-Term Care Planning District during the next two (2) fiscal years, at least one (1) shall be issued for beds in the northern part of the district, at least one (1) shall be issued for beds in the central part of the district, and at least one (1) shall be issued for beds in the southern part of the district.

(iii) The State Department of Health, in consultation with the Department of Mental Health and the Division of Medicaid, shall develop and prescribe the staffing levels, space requirements and other standards and requirements that must be met with regard to the nursing facility beds authorized under this paragraph (r) to provide care exclusively to patients with Alzheimer's disease.

(s) The State Department of Health may issue a certificate of need to a nonprofit skilled nursing facility using the Green House model of skilled nursing care and located in Yazoo City, Yazoo County, Mississippi, for the construction, expansion or conversion of not more than nineteen (19) nursing facility beds. For purposes of this paragraph (s), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized under this paragraph (s).

(t) The State Department of Health shall issue certificates of need to the owner of a nursing facility in operation at the time of Hurricane Katrina in Hancock County that was not operational on December 31, 2005, because of damage sustained from Hurricane Katrina to authorize the following: (i) the construction of a new nursing facility in Harrison County; (ii) the relocation of forty-nine (49) nursing facility beds from the Hancock County facility to the new Harrison County facility; (iii) the establishment of not more than twenty (20) non-Medicaid nursing facility beds at the Hancock County facility; and (iv) the establishment of not more than twenty (20) non-Medicaid beds at the new Harrison County facility. The certificates of need that authorize the non-Medicaid nursing facility beds under subparagraphs (iii) and (iv) of this paragraph (t) shall be subject to the following conditions: The owner of the Hancock County facility and the new Harrison County facility must agree in writing that no more than fifty (50) of the beds at the Hancock County facility and no more than forty-nine (49) of the beds at the Harrison County facility will be certified for participation in the Medicaid program, and that no claim will be submitted for Medicaid reimbursement for more than fifty (50) patients in the Hancock County facility in any month, or for more than forty-nine (49) patients in the Harrison County facility in any month, or for any patient in either facility who is in a bed that is not Medicaid-certified. This written agreement by the owner of the nursing facilities shall be a condition of the issuance of the certificates of need under this paragraph (t), and the agreement shall be fully binding on any later owner or owners of either facility if the ownership of either facility is transferred at any time after the certificates of need are issued. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than fifty (50) of the beds at the Hancock County facility or more than forty-nine (49) of the beds at the Harrison County facility for participation in the Medicaid program. If the Hancock County facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than fifty (50) patients who are participating in the Medicaid program, or if the Harrison County facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than forty-nine (49) patients who are participating in the

Medicaid program, the State Department of Health shall revoke the license of the facility that is in violation of the agreement, at the time that the department determines, after a hearing complying with due process, that the facility has violated the agreement.

(u) The State Department of Health shall issue a certificate of need to a nonprofit venture for the establishment, construction and operation of a skilled nursing facility of not more than sixty (60) beds to provide skilled nursing care for ventilator dependent or otherwise medically dependent pediatric patients who require medical and nursing care or rehabilitation services to be located in a county in which an academic medical center and a children's hospital are located, and for any construction and for the acquisition of equipment related to those beds. The facility shall be authorized to keep such ventilator dependent or otherwise medically dependent pediatric patients beyond age twenty-one (21) in accordance with regulations of the State Board of Health. For purposes of this paragraph (u), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived, and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. The beds authorized by this paragraph shall be counted as pediatric skilled nursing facility beds for health planning purposes under Section 41-7-171 et seq. There shall be no prohibition of or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized by this paragraph.

(3) The State Department of Health may grant approval for and issue certificates of need to any person proposing the new construction of, addition to, conversion of beds of or expansion of any health care facility defined in subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h). The total number of beds which may be authorized by such certificates of need shall not exceed three hundred thirty-four (334) beds for the entire state.

(a) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a privately owned psychiatric residential treatment facility in Simpson County for the conversion of sixteen (16) intermediate care facility for the mentally retarded (ICF-MR) beds to psychiatric residential treatment facility beds, provided that facility agrees in writing that the facility shall give priority for the use of those sixteen (16) beds to Mississippi residents who are presently being treated in out-of-state facilities.

(b) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric residential treatment facility beds in Warren County, not to exceed sixty (60) psychiatric residential treatment facility beds, provided that the facility agrees in writing that no more than thirty (30) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et

seq.) for the use of any patients other than those who are participating only in the Medicaid program of another state, and that no claim will be submitted to the Division of Medicaid for Medicaid reimbursement for more than thirty (30) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State Department of Health shall not certify more than thirty (30) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program for the use of any patients other than those who are participating only in the Medicaid program of another state. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than thirty (30) patients who are participating in the Mississippi Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

The State Department of Health, on or before July 1, 2002, shall transfer the certificate of need authorized under the authority of this paragraph (b), or reissue the certificate of need if it has expired, to River Region Health System.

(c) Of the total number of beds authorized under this subsection, the department shall issue a certificate of need to a hospital currently operating Medicaid-certified acute psychiatric beds for adolescents in DeSoto County, for the establishment of a forty-bed psychiatric residential treatment facility in DeSoto County, provided that the hospital agrees in writing (i) that the hospital shall give priority for the use of those forty (40) beds to Mississippi residents who are presently being treated in out-of-state facilities, and (ii) that no more than fifteen (15) of the beds at the psychiatric residential treatment facility will be certified for participation in the Medicaid program (Section 43-13-101 et seq.), and that no claim will be submitted for Medicaid reimbursement for more than fifteen (15) patients in the psychiatric residential treatment facility in any day or for any patient in the psychiatric residential treatment facility who is in a bed that is not Medicaid-certified. This written agreement by the recipient of the certificate of need shall be a condition of the issuance of the certificate of need under this paragraph, and the agreement shall be fully binding on any subsequent owner of the psychiatric residential treatment facility if the ownership of the facility is transferred at any time after the issuance of the certificate of need. After this written agreement is executed, the Division of Medicaid and the State

Department of Health shall not certify more than fifteen (15) of the beds in the psychiatric residential treatment facility for participation in the Medicaid program. If the psychiatric residential treatment facility violates the terms of the written agreement by admitting or keeping in the facility on a regular or continuing basis more than fifteen (15) patients who are participating in the Medicaid program, the State Department of Health shall revoke the license of the facility, at the time that the department determines, after a hearing complying with due process, that the facility has violated the condition upon which the certificate of need was issued, as provided in this paragraph and in the written agreement.

(d) Of the total number of beds authorized under this subsection, the department may issue a certificate or certificates of need for the construction or expansion of psychiatric residential treatment facility beds or the conversion of other beds to psychiatric treatment facility beds, not to exceed thirty (30) psychiatric residential treatment facility beds, in either Alcorn, Tishomingo, Prentiss, Lee, Itawamba, Monroe, Chickasaw, Pontotoc, Calhoun, Lafayette, Union, Benton or Tippah County.

(e) Of the total number of beds authorized under this subsection (3) the department shall issue a certificate of need to a privately owned, nonprofit psychiatric residential treatment facility in Hinds County for an eight-bed expansion of the facility, provided that the facility agrees in writing that the facility shall give priority for the use of those eight (8) beds to Mississippi residents who are presently being treated in out-of-state facilities.

(f) The department shall issue a certificate of need to a one-hundred-thirty-four-bed specialty hospital located on twenty-nine and forty-four one-hundredths (29.44) commercial acres at 5900 Highway 39 North in Meridian (Lauderdale County), Mississippi, for the addition, construction or expansion of child/adolescent psychiatric residential treatment facility beds in Lauderdale County. As a condition of issuance of the certificate of need under this paragraph, the facility shall give priority in admissions to the child/adolescent psychiatric residential treatment facility beds authorized under this paragraph to patients who otherwise would require out-of-state placement. The Division of Medicaid, in conjunction with the Department of Human Services, shall furnish the facility a list of all out-of-state patients on a quarterly basis. Furthermore, notice shall also be provided to the parent, custodial parent or guardian of each out-of-state patient notifying them of the priority status granted by this paragraph. For purposes of this paragraph, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of child/adolescent psychiatric residential treatment facility beds that may be authorized under the authority of this paragraph shall be sixty (60) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this paragraph or for the beds converted pursuant to the authority of that certificate of need.

(4)(a) From and after July 1, 1993, the department shall not issue a certificate of need to any person for the new construction of any hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the conversion of any other health care facility to a hospital, psychiatric hospital or chemical dependency hospital that will contain any child/adolescent psychiatric or child/adolescent chemical dependency beds, or for the addition of any child/adolescent psychiatric or child/adolescent chemical dependency beds in any hospital, psychiatric hospital or chemical dependency hospital, or for the conversion of any beds of another category in any hospital, psychiatric hospital or chemical dependency hospital to child/adolescent psychiatric or child/adolescent chemical dependency beds, except as hereinafter authorized:

(i) The department may issue certificates of need to any person for any purpose described in this subsection, provided that the hospital, psychiatric hospital or chemical dependency hospital does not participate in the Medicaid program (Section 43-13-101 et seq.) at the time of the application for the certificate of need and the owner of the hospital, psychiatric hospital or chemical dependency hospital agrees in writing that the hospital, psychiatric hospital or chemical dependency hospital will not at any time participate in the Medicaid program or admit or keep any patients who are participating in the Medicaid program in the hospital, psychiatric hospital or chemical dependency hospital. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital, psychiatric hospital or chemical dependency hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the hospital, psychiatric hospital or chemical dependency hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (i), and if such hospital, psychiatric hospital or chemical dependency hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the hospital, psychiatric hospital or chemical dependency hospital who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the hospital, psychiatric hospital or chemical dependency hospital, at the time that the department determines, after a hearing complying with due process, that the hospital, psychiatric hospital or chemical dependency hospital has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subparagraph (i) and in the written agreement by the recipient of the certificate of need.

(ii) The department may issue a certificate of need for the conversion of existing beds in a county hospital in Choctaw County from acute care beds to child/adolescent chemical dependency beds. For purposes of this

subparagraph (ii), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the hospital receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(iii) The department may issue a certificate or certificates of need for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in Warren County. For purposes of this subparagraph (iii), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

If by January 1, 2002, there has been no significant commencement of construction of the beds authorized under this subparagraph (iii), or no significant action taken to convert existing beds to the beds authorized under this subparagraph, then the certificate of need that was previously issued under this subparagraph shall expire. If the previously issued certificate of need expires, the department may accept applications for issuance of another certificate of need for the beds authorized under this subparagraph, and may issue a certificate of need to authorize the construction, expansion or conversion of the beds authorized under this subparagraph.

(iv) The department shall issue a certificate of need to the Region 7 Mental Health/Retardation Commission for the construction or expansion of child/adolescent psychiatric beds or the conversion of other beds to child/adolescent psychiatric beds in any of the counties served by the commission. For purposes of this subparagraph (iv), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed twenty (20) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(v) The department may issue a certificate of need to any county hospital located in Leflore County for the construction or expansion of adult psychiatric beds or the conversion of other beds to adult psychiatric

beds, not to exceed twenty (20) beds, provided that the recipient of the certificate of need agrees in writing that the adult psychiatric beds will not at any time be certified for participation in the Medicaid program and that the hospital will not admit or keep any patients who are participating in the Medicaid program in any of such adult psychiatric beds. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the hospital if the ownership of the hospital is transferred at any time after the issuance of the certificate of need. Agreement that the adult psychiatric beds will not be certified for participation in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subparagraph (v), and if such hospital at any time after the issuance of the certificate of need, regardless of the ownership of the hospital, has any of such adult psychiatric beds certified for participation in the Medicaid program or admits or keeps any Medicaid patients in such adult psychiatric beds, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the hospital at the time that the department determines, after a hearing complying with due process, that the hospital has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subparagraph and in the written agreement by the recipient of the certificate of need.

(vi) The department may issue a certificate or certificates of need for the expansion of child psychiatric beds or the conversion of other beds to child psychiatric beds at the University of Mississippi Medical Center. For purposes of this subparagraph (vi), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived. The total number of beds that may be authorized under the authority of this subparagraph shall not exceed fifteen (15) beds. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the hospital receiving the certificate of need authorized under this subparagraph or for the beds converted pursuant to the authority of that certificate of need.

(b) From and after July 1, 1990, no hospital, psychiatric hospital or chemical dependency hospital shall be authorized to add any child/adolescent psychiatric or child/adolescent chemical dependency beds or convert any beds of another category to child/adolescent psychiatric or child/adolescent chemical dependency beds without a certificate of need under the authority of subsection (1)(c) of this section.

(5) The department may issue a certificate of need to a county hospital in Winston County for the conversion of fifteen (15) acute care beds to geriatric psychiatric care beds.

(6) The State Department of Health shall issue a certificate of need to a Mississippi corporation qualified to manage a long-term care hospital as defined in Section 41-7-173(h)(xii) in Harrison County, not to exceed eighty (80)

beds, including any necessary renovation or construction required for licensure and certification, provided that the recipient of the certificate of need agrees in writing that the long-term care hospital will not at any time participate in the Medicaid program (Section 43-13-101 et seq.) or admit or keep any patients in the long-term care hospital who are participating in the Medicaid program. This written agreement by the recipient of the certificate of need shall be fully binding on any subsequent owner of the long-term care hospital, if the ownership of the facility is transferred at any time after the issuance of the certificate of need. Agreement that the long-term care hospital will not participate in the Medicaid program shall be a condition of the issuance of a certificate of need to any person under this subsection (6), and if such long-term care hospital at any time after the issuance of the certificate of need, regardless of the ownership of the facility, participates in the Medicaid program or admits or keeps any patients in the facility who are participating in the Medicaid program, the State Department of Health shall revoke the certificate of need, if it is still outstanding, and shall deny or revoke the license of the long-term care hospital, at the time that the department determines, after a hearing complying with due process, that the facility has failed to comply with any of the conditions upon which the certificate of need was issued, as provided in this subsection and in the written agreement by the recipient of the certificate of need. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are hereby waived.

(7) The State Department of Health may issue a certificate of need to any hospital in the state to utilize a portion of its beds for the "swing-bed" concept. Any such hospital must be in conformance with the federal regulations regarding such swing-bed concept at the time it submits its application for a certificate of need to the State Department of Health, except that such hospital may have more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program. Any hospital meeting all federal requirements for participation in the swing-bed program which receives such certificate of need shall render services provided under the swing-bed concept to any patient eligible for Medicare (Title XVIII of the Social Security Act) who is certified by a physician to be in need of such services, and no such hospital shall permit any patient who is eligible for both Medicaid and Medicare or eligible only for Medicaid to stay in the swing beds of the hospital for more than thirty (30) days per admission unless the hospital receives prior approval for such patient from the Division of Medicaid, Office of the Governor. Any hospital having more licensed beds or a higher average daily census (ADC) than the maximum number specified in federal regulations for participation in the swing-bed program which receives such certificate of need shall develop a procedure to insure that before a patient is allowed to stay in the swing beds of the hospital, there are no vacant nursing home beds available for that patient located within a fifty-mile radius of the hospital. When any such hospital has a patient

staying in the swing beds of the hospital and the hospital receives notice from a nursing home located within such radius that there is a vacant bed available for that patient, the hospital shall transfer the patient to the nursing home within a reasonable time after receipt of the notice. Any hospital which is subject to the requirements of the two (2) preceding sentences of this subsection may be suspended from participation in the swing-bed program for a reasonable period of time by the State Department of Health if the department, after a hearing complying with due process, determines that the hospital has failed to comply with any of those requirements.

(8) The Department of Health shall not grant approval for or issue a certificate of need to any person proposing the new construction of, addition to or expansion of a health care facility as defined in subparagraph (viii) of Section 41-7-173(h), except as hereinafter provided: The department may issue a certificate of need to a nonprofit corporation located in Madison County, Mississippi, for the construction, expansion or conversion of not more than twenty (20) beds in a community living program for developmentally disabled adults in a facility as defined in subparagraph (viii) of Section 41-7-173(h). For purposes of this subsection (8), the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the certificate of need authorized under this subsection (8).

(9) The Department of Health shall not grant approval for or issue a certificate of need to any person proposing the establishment of, or expansion of the currently approved territory of, or the contracting to establish a home office, subunit or branch office within the space operated as a health care facility as defined in Section 41-7-173(h) (i) through (viii) by a health care facility as defined in subparagraph (ix) of Section 41-7-173(h).

(10) Health care facilities owned and/or operated by the state or its agencies are exempt from the restraints in this section against issuance of a certificate of need if such addition or expansion consists of repairing or renovation necessary to comply with the state licensure law. This exception shall not apply to the new construction of any building by such state facility. This exception shall not apply to any health care facilities owned and/or operated by counties, municipalities, districts, unincorporated areas, other defined persons, or any combination thereof.

(11) The new construction, renovation or expansion of or addition to any health care facility defined in subparagraph (ii) (psychiatric hospital), subparagraph (iv) (skilled nursing facility), subparagraph (vi) (intermediate care facility), subparagraph (viii) (intermediate care facility for the mentally retarded) and subparagraph (x) (psychiatric residential treatment facility) of Section 41-7-173(h) which is owned by the State of Mississippi and under the direction and control of the State Department of Mental Health, and the addition of new beds or the conversion of beds from one category to another in any such defined health care facility which is owned by the State of Mississippi

and under the direction and control of the State Department of Mental Health, shall not require the issuance of a certificate of need under Section 41-7-171 et seq., notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(12) The new construction, renovation or expansion of or addition to any veterans homes or domiciliaries for eligible veterans of the State of Mississippi as authorized under Section 35-1-19 shall not require the issuance of a certificate of need, notwithstanding any provision in Section 41-7-171 et seq. to the contrary.

(13) [Repealed]

(14) The State Department of Health shall issue a certificate of need to any hospital which is currently licensed for two hundred fifty (250) or more acute care beds and is located in any general hospital service area not having a comprehensive cancer center, for the establishment and equipping of such a center which provides facilities and services for outpatient radiation oncology therapy, outpatient medical oncology therapy, and appropriate support services including the provision of radiation therapy services. The provisions of Section 41-7-193(1) regarding substantial compliance with the projection of need as reported in the current State Health Plan are waived for the purpose of this subsection.

(15) The State Department of Health may authorize the transfer of hospital beds, not to exceed sixty (60) beds, from the North Panola Community Hospital to the South Panola Community Hospital. The authorization for the transfer of those beds shall be exempt from the certificate of need review process.

(16) The State Department of Health shall issue any certificates of need necessary for Mississippi State University and a public or private health care provider to jointly acquire and operate a linear accelerator and a magnetic resonance imaging unit. Those certificates of need shall cover all capital expenditures related to the project between Mississippi State University and the health care provider, including, but not limited to, the acquisition of the linear accelerator, the magnetic resonance imaging unit and other radiological modalities; the offering of linear accelerator and magnetic resonance imaging services; and the cost of construction of facilities in which to locate these services. The linear accelerator and the magnetic resonance imaging unit shall be (a) located in the City of Starkville, Oktibbeha County, Mississippi; (b) operated jointly by Mississippi State University and the public or private health care provider selected by Mississippi State University through a request for proposals (RFP) process in which Mississippi State University selects, and the Board of Trustees of State Institutions of Higher Learning approves, the health care provider that makes the best overall proposal; (c) available to Mississippi State University for research purposes two-thirds ($\frac{2}{3}$) of the time that the linear accelerator and magnetic resonance imaging unit are operational; and (d) available to the public or private health care provider selected by Mississippi State University and approved by the Board of Trustees of State Institutions of Higher Learning one-third ($\frac{1}{3}$) of the time for clinical, diagnostic and treatment purposes. For purposes of this subsection, the

provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan are waived.

(17) The State Department of Health shall issue a certificate of need for the construction of an acute care hospital in Kemper County, not to exceed twenty-five (25) beds, which shall be named the “John C. Stennis Memorial Hospital.” In issuing the certificate of need under this subsection, the department shall give priority to a hospital located in Lauderdale County that has two hundred fifteen (215) beds. For purposes of this subsection, the provisions of Section 41-7-193(1) requiring substantial compliance with the projection of need as reported in the current State Health Plan and the provisions of Section 41-7-197 requiring a formal certificate of need hearing process are waived. There shall be no prohibition or restrictions on participation in the Medicaid program (Section 43-13-101 et seq.) for the person or entity receiving the certificate of need authorized under this subsection or for the beds constructed under the authority of that certificate of need.

(18) Nothing in this section or in any other provision of Section 41-7-171 et seq. shall prevent any nursing facility from designating an appropriate number of existing beds in the facility as beds for providing care exclusively to patients with Alzheimer’s disease.

SOURCES: Laws, 1979, ch. 451, §§ 9, 27; Laws, 1980, ch. 493, § 5; Laws, 1981, ch. 484, § 14; Laws, 1982, ch. 499, § 1; Laws, 1983, ch. 484, § 5; Laws, 1984, ch. 505; Laws, 1985, ch. 534, § 8; Laws, 1986, ch. 437, § 40; Laws, 1987, ch. 515, § 6; Laws, 1988, ch. 421, § 1; Laws, 1989, ch. 530, § 2; Laws, 1990, ch. 510, § 2; Laws, 1993, ch. 426, § 10; Laws, 1993, ch. 493, § 1; Laws, 1993, ch. 609, § 10; Laws, 1994, ch. 649, § 16; Laws, 1995, ch. 599, § 1; Laws, 1996, ch. 551, § 1; Laws, 1998, ch. 596, § 1; Laws, 1999, ch. 303, § 1; Laws, 1999, ch. 495, § 2; Laws, 1999, ch. 583, § 2; Laws, 2001, ch. 342, § 1; Laws, 2001, ch. 607, § 1; Laws, 2002, ch. 636B, § 6; Laws, 2003, ch. 393, § 2; Laws, 2004, ch. 438, § 1; Laws, 2006, ch. 513, § 1; Laws, 2007, ch. 514, § 21; Laws, 2012, ch. 524, § 14, eff from and after passage (approved May 18, 2012.)

Joint Legislative Committee Note — In 2009, typographical errors in this section were corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by making the following substitutions: in (1)(l), “subsection (1) of this section” for “this Section 41-7-191(1)”; in (2)(j), (4)(a)(ii), (4)(a)(iv), (4)(a)(vi), (6) and (14), “...the provisions of Section 41-7-193(l)...are waived” for “...the provision of Section 41-7-193(l)...is waived”; in (2)(l), “...the provisions of Section 41-7-193(l)...are hereby waived” for “...the provision of Section 41-7-193(l)...is hereby waived”; in (2)(n), “...within eighteen (18) months after July 1, 1998” for “within eighteen months after the effective date of July 1, 1998...”; and in (2)(o), “...within eighteen (18) months after July 1, 2001” for “within eighteen months after the effective date of July 1, 2001...” The section as set out in the bound volume reflects these corrections, which were ratified by the Joint Committee at its July 22, 2010, meeting.

Editor’s Note — Former subsection (13), which provided that new construction of nursing facilities or nursing facility beds or the conversion of other beds to nursing facility beds did not require the issuance of a certificate of need under certain circumstances, was repealed by its own terms effective July 1, 2005.

Amendment Notes — The 2012 amendment added (2)(u).

JUDICIAL DECISIONS

4. Revocation.

Language in the statutes that establish certificates of need (CONs), Miss. Code Ann. § 41-7-191 and Miss. Code Ann. § 41-7-195, indicates that the Mississippi Legislature does not intend for the CONs to exist in perpetuity; instead, the CONs have a specific legislatively-enacted expi-

ration date. Therefore, there was no error when a trial court affirmed a decision from the Mississippi State Department of Health regarding the revocation of two legislatively-established CONs. *Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health*, 29 So. 3d 775 (Miss. Ct. App. 2009).

§ 41-7-193. Certificate of need; new institutional health services and other projects.

Cross References — Provisions of subsection (1) of this section waived for the purposes of 41-7-191(2)(u), see § 41-7-191.

JUDICIAL DECISIONS

1. In general.

Judgment awarding a company a certificate of need allowing it to relocate nursing home beds was reversed because the Mississippi State Department of Health did not act arbitrarily or capriciously, outside of its authority, or violate any vested constitutional rights in denying the certificate of need as pursuant to Miss. Code Ann. § 41-7-193(1), there was substantial evidence in the record to support the finding that the relocation project was not

consistent with the State Health Plan and under Miss. Code Ann. § 41-7-201(2)(f), there was substantial evidence showing that the relocation of the nursing home beds would have a significant adverse affect on the ability of an existing facility or service to provide indigent care. *State Dep't of Health v. Mid-South Assocs., LLC*, 25 So. 3d 358 (Miss. Ct. App. Apr. 21, 2009), writ of certiorari denied by 24 So. 3d 1038, 2010 Miss. LEXIS 20 (Miss. 2010).

§ 41-7-195. Certificate of need; validity; transferability; duration; revocation.

JUDICIAL DECISIONS

1. In general.
2. Time period.
3. Revocation.
4. Hearing officer.

1. In general.

Nothing in Miss. Code Ann. 41-7-195(4) indicates that the Mississippi Legislature intends to limit the Mississippi State Department of Health's certificate of need (CON) revocation power to only those CONs that are not authorized by statute. *Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health*, 29 So. 3d 775 (Miss. Ct. App. 2009).

2. Time period.

Pursuant to the plain language of Miss. Code Ann. § 41-7-195, the Mississippi State Department of Health did not have the authority to grant an applicant an extension of its Certificate of Need (CON) after the CON had expired, nor the authority to promulgate a rule allowing holders of expired CONs the right to request an extension of their CONs. *Dialysis Solution, LLC v. Miss. State Dep't of Health*, 31 So. 3d 1204 (Miss. 2010).

Language in the statutes that establish certificates of need (CONs), Miss. Code Ann. § 41-7-191 and Miss. Code Ann.

§ 41-7-195, indicates that the Mississippi Legislature does not intend for the CONs to exist in perpetuity; instead, the CONs have a specific legislatively-enacted expiration date. Therefore, there was no error when a trial court affirmed a decision from the Mississippi State Department of Health regarding the revocation of two legislatively-established CONs. *Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health*, 29 So. 3d 775 (Miss. Ct. App. 2009).

3. Revocation.

Revocation of two certificates of need (CONs) for a hospital was not arbitrary and capricious because a hospital did not do anything that qualified as the commencement of construction or a good faith effort to obligate an approved expenditure; very little money had been spent in furtherance of a project, and the evidence

showed that the hospital focused its efforts into the relocation of the project, rather than completion of the project contemplated by the CONs. *Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health*, 29 So. 3d 775 (Miss. Ct. App. 2009).

4. Hearing officer.

In a case involving the revocation of two certificates of need (CONs), although a hearing officer made an improper reference about giving deference to the Mississippi State Department of Health, there was no reversible error because it was clear that the hearing officer acted according to her mandate to make recommended findings of fact and conclusions of law to a state health officer. *Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health*, 29 So. 3d 775 (Miss. Ct. App. 2009).

§ 41-7-197. Certificate of need; hearing before hearing officer; review.

Cross References — Provisions of this section waived for the purposes of 41-7-191(2)(u), see § 41-7-191.

JUDICIAL DECISIONS

3. Attorney General opinion.

In a case involving the revocation of two certificates of need (CONs), a hospital was not prejudiced by an opinion from an attorney general because the decision to revoke was based on the conclusion that the hospital had not substantially under-

taken to complete the two CONs at issue and that there had been no good faith effort to complete the projects contemplated by the CONs. *Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health*, 29 So. 3d 775 (Miss. Ct. App. 2009).

§ 41-7-201. Direct appeal of final order pertaining to certificate of need to the Mississippi Supreme Court.

The provisions of this section shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for any health care facility as defined in Section 41-7-173(h):

(a) There shall be a "stay of proceedings" of any final order issued by the State Department of Health pertaining to the issuance of a certificate of need for the establishment, construction, expansion or replacement of a health care facility for a period of thirty (30) days from the date of the order, if an existing provider located in the same service area where the health care facility is or will be located has requested a hearing during the course of review in opposition to the issuance of the certificate of need. The stay of

proceedings shall expire at the termination of thirty (30) days; however, no construction, renovation or other capital expenditure that is the subject of the order shall be undertaken, no license to operate any facility that is the subject of the order shall be issued by the licensing agency, and no certification to participate in the Title XVIII or Title XIX programs of the Social Security Act shall be granted, until all statutory appeals have been exhausted or the time for those appeals has expired. Notwithstanding the foregoing, the filing of an appeal from a final order of the State Department of Health for the issuance of a certificate of need shall not prevent the purchase of medical equipment or development or offering of institutional health services granted in a certificate of need issued by the State Department of Health.

(b) In addition to other remedies now available at law or in equity, any party aggrieved by any such final order of the State Department of Health shall have the right of direct appeal to the Mississippi Supreme Court, which appeal must be filed within twenty (20) days after the date of the final order. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of.

(c) Upon the filing of such an appeal, the Clerk of the Supreme Court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within thirty (30) days of the date of the filing of the appeal, certify to the court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; however, the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal.

(d) Any appeal of a final order by the State Department of Health in a certificate of need proceeding shall require the giving of a bond by the appellant(s) sufficient to secure the appellee against the loss of costs, fees, expenses and attorney's fees incurred in defense of the appeal, approved by the Supreme Court within five (5) days of the date of filing the appeal.

(e) No new or additional evidence shall be introduced in the Supreme Court, but the case shall be determined upon the record certified to the court.

(f) The Supreme Court may sustain or dismiss the appeal, modify or vacate the order complained of, in whole or in part, and may make an award of costs, fees, expenses and attorney's fees, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for any further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The court, as part of the final order, shall make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) if the court affirms the order of the State Department of Health. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial

evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal.

(g) Within thirty (30) days from the date of a final order by the Supreme Court that modifies or wholly or partly vacates the final order of the State Department of Health granting a certificate of need, the State Department of Health shall issue another order in conformity with the final order of the Supreme Court.

SOURCES: Laws, 1979, ch. 451, § 16; Laws, 1983, ch. 484, § 8; Laws, 1985, ch. 534, § 11; Laws, 1986, ch. 437, § 44; Laws, 1992, ch. 512 § 1; Laws, 1999, ch. 583, § 3; Laws, 2011, ch. 540, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment rewrote the section.

JUDICIAL DECISIONS

2. Substantial evidence.
3. No reversible error.

2. Substantial evidence.

Judgment awarding a company a certificate of need allowing it to relocate nursing home beds was reversed because the Mississippi State Department of Health did not act arbitrarily or capriciously, outside of its authority, or violate any vested constitutional rights in denying the certificate of need as pursuant to Miss. Code Ann. § 41-7-193(1), there was substantial evidence in the record to support the finding that the relocation project was not consistent with the State Health Plan and under Miss. Code Ann. § 41-7-201(2)(f), there was substantial evidence showing that the relocation of the nursing home beds would have a significant adverse affect on the ability of an existing facility

or service to provide indigent care. *State Dep't of Health v. Mid-South Assocs., LLC*, 25 So. 3d 358 (Miss. Ct. App. Apr. 21, 2009), writ of certiorari denied by 24 So. 3d 1038, 2010 Miss. LEXIS 20 (Miss. 2010).

3. No reversible error.

In a case involving the revocation of two certificates of need (CONs), although a hearing officer made an improper reference about giving deference to the Mississippi State Department of Health, there was no reversible error because it was clear that the hearing officer acted according to her mandate to make recommended findings of fact and conclusions of law to a state health officer. *Brentwood Health Mgmt. of Miss., LLC v. Miss. State Dep't of Health*, 29 So. 3d 775 (Miss. Ct. App. 2009).

§ 41-7-205. Nonsubstantive projects; exemption from formal review.

The State Department of Health shall provide an expedited review for those projects which it determines to warrant such action. All requests for such an expedited review by the applicant must be made in writing to the State Department of Health. The State Department of Health shall make a determination as to whether expedited review is appropriate within fifteen (15) days after receipt of a written request. The State Department of Health shall render its decision concerning the issuance of a certificate of need within ninety (90) days after the receipt of a completed application. A project is subject to expedited review only if it meets one (1) of the following criteria:

(a) A transfer or change of ownership of a health care facility wherein the facility continues to operate under the same category of license or permit as it possessed prior to the date of the proposed change of ownership and none of the other activities described in Section 41-7-191(1) take place in conjunction with such transfer;

(b) Replacement of equipment with used equipment of similar capability if the equipment is included in the facility's annual capital expenditure budget or plan;

(c) A request for project cost overruns that exceed the rate of inflation as determined by the State Department of Health;

(d) A request for relocation of services or facilities if the relocation of such services or facilities (i) involves a capital expenditure by or on behalf of a health care facility, or (ii) is more than one thousand three hundred twenty (1,320) feet from the main entrance of the health care facility or the facility where the service is located;

(e) A request for a certificate of need to comply with duly recognized fire, building, or life safety codes, or to comply with state licensure standards or accreditation standards required for reimbursements; and

(f) A request for a certificate of need for an expenditure that is not for a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure service or series of those procedures, and that exceeds the capital expenditure minimum specified under Section 41-7-173.

SOURCES: Laws, 1979, ch. 451, § 11; Laws, 1980, ch. 493, § 10; Laws, 1982, ch. 482, § 7; Laws, 1985, ch. 534, § 13; Laws, 1986, ch. 338; Laws, 1986, ch. 437, § 46; Laws, 1987, ch. 515, § 7; Laws, 1999, ch. 583, § 5; Laws, 2011, ch. 540, § 2, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment added (f).

CHAPTER 9

Regulation of Hospitals; Hospital Records

Regulation of Hospitals	41-9-1
Reimbursement for Trauma Care Service	41-9-51

REGULATION OF HOSPITALS

SEC.
41-9-35. Injunction.

§ 41-9-35. Injunction.

Notwithstanding the existence or pursuit of any other remedy, the licensing agency, may in the manner provided by law, upon the advice of the Attorney General who, except as otherwise authorized in Section 7-5-39, shall represent the licensing agency in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or

governmental unit to restrain or prevent the establishment, conduct, management or operation of a hospital without a license as provided for in Section 41-9-11.

SOURCES: Codes, 1942, § 7146.5-16; Laws, 1948, ch. 398, § 16; Laws, 2012, ch. 546, § 15, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment inserted “except as otherwise authorized in Section 7-5-39” near the middle.

REIMBURSEMENT FOR TRAUMA CARE SERVICE

§ 41-9-51. Hospitals authorized to charge patient for reasonable cost of activating trauma care services under certain circumstances; reimbursement by health-care insurer.

SOURCES: Laws, 2008, ch. 549, § 8; reenacted without change, Laws, 2011, ch. 545, § 1, eff from and after July 1, 2011.

Editor’s Note — Laws of 2011, ch. 545, § 8, effective July 1, 2011, amended Laws of 2008, ch. 549, § 9, to extend the date of the repealer for this section from July 1, 2011, until July 1, 2014. Subsequently, Laws of 2011, ch. 531, § 2, effective July 2, 2011, repealed Laws of 2008, ch. 549, § 9, to delete the repealer for this section.

This section was reenacted without change by Laws of 2011, ch. 545, effective from and after July 1, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

HOSPITAL RECORDS — USE IN TRIALS AND ADMINISTRATIVE HEARINGS

§ 41-9-119. Evidence of reasonableness of medical expenses.

JUDICIAL DECISIONS

1. In general.

According to the testimony, the pedestrian’s medical bills were incurred due to the injury at issue; under Miss. Code Ann. § 41-9-119, the trial court committed reversible error by refusing to allow them to

be submitted to the jury; and a new trial was ordered, with directions that the parties be allowed to supplement their discovery responses with respect to expert witnesses. *Estate of Bolden v. Williams*, 17 So. 3d 1069 (Miss. 2009).

CHAPTER 13

Community Hospitals

IN GENERAL

§ 41-13-15. Community hospitals and health facilities in counties and municipalities.

JUDICIAL DECISIONS

1. In general.

Liberal construction of Miss. Code Ann. § 41-13-15 is appropriate. *Corporate Mgmt. v. Greene County*, 23 So. 3d 454 (Miss. 2009).

Interpreting the statute liberally, the trial court properly found that the county

was in compliance with the RFP requirements of § 41-13-15(7). *Corporate Mgmt. v. Greene County*, 23 So. 3d 454 (Miss. 2009).

§ 41-13-35. General powers and duties of trustees; bonds; prohibited acts or behavior of trustees, individual trustee, or agent or servant of trustee.

JUDICIAL DECISIONS

1. In general.

From a hospital management company's action seeking injunctive relief to prevent the County's termination, through its board of supervisors, of an agreement to allow the company to manage a county hospital, the hospital agree-

ment was not binding upon the supervisors as the hospital trustees did not have authority to enter the agreement under Miss. Code Ann. § 41-3-35 without the approval of the board of supervisors. *Greene County v. Corporate Mgmt.*, 10 So. 3d 424 (Miss. 2009).

§ 41-13-38. Provisions of certain loans by hospital; financial assistance to nonprofit groups.

ATTORNEY GENERAL OPINIONS

In the process of "winding down" its operations, the Board of Trustees of the Beat 4 Community Hospital, owned by Newton county, is authorized under Miss. Code Ann. § 41-13-38(2) to disburse its remaining funds to Newton Hospital, Inc., a privately-owned non-profit hospital corporation which is building the new Newton County Hospital, upon a finding made

by the Beat 4 Community Hospital Board of Trustees and the Newton County Board of Supervisors, and recorded in their minutes, that such action would benefit the health or welfare of the citizens of the service area. *Monroe*, March 16, 2007, A.G. Op. #00109, 2007 Miss. AG LEXIS 105.

CHAPTER 19

Facilities and Services for Individuals with an Intellectual Disability or Mental Illness

North Mississippi Regional Center	41-19-1
Facilities and Services for Individuals with Mental Retardation or Mental Illness	41-19-31
Contributions by Certain Local Governments to Nonprofit Corporations Assisting Children with Mental Retardation	41-19-91
Ellisville State School	41-19-101
South Mississippi Regional Center	41-19-141
Boswell Regional Center	41-19-201
Hudspeth Regional Center	41-19-231
Mississippi Adolescent Center in Brookhaven	41-19-301

NORTH MISSISSIPPI REGIONAL CENTER

SEC.	
41-19-1.	Declaration of purpose.
41-19-7.	Management and operation of center.
41-19-15.	Penalties.
41-19-17.	Designation of North Mississippi Regional Center as state agency for carrying out federal acts pertaining to intellectual disabilities.

§ 41-19-1. Declaration of purpose.

The purpose of Sections 41-19-1 through 41-19-17 is to create, construct, equip and maintain a center, to be located in North Mississippi, for the care and treatment of persons with an intellectual disability, which shall be known as the North Mississippi Regional Center.

SOURCES: Codes, 1942, § 6900-01; Laws, 1968, ch. 438, § 1; Laws, 1992, ch. 336, § 1; Laws, 2010, ch. 476, § 25, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “persons with an intellectual disability” for “the mentally retarded.”

§ 41-19-7. Management and operation of center.

The center shall be administered by the State Board of Mental Health. Provisions relating to the admission and care of residents and patients provided for hereinafter shall apply to all institutions for persons with an intellectual disability administered by the board.

SOURCES: Codes, 1942, § 6900-04; Laws, 1968, ch. 438, § 4; Laws, 1974, ch. 567, § 14; Laws, 2010, ch. 476, § 26, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “persons with an intellectual disability” for “the mentally retarded.”

§ 41-19-15. Penalties.

Any person who (1) under the provisions of Section 41-19-11, knowingly and unlawfully or improperly causes a person to be adjudged a person with an intellectual disability, (2) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the center, or (3) unlawfully brings any firearm, deadly weapon or explosive into the center or its grounds, or passes any thereof to resident, employee or officer of the center, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Two Hundred Dollars (\$200.00), imprisonment for not less than six (6) months, or both.

SOURCES: Codes, 1942, § 6900-08; Laws, 1968, ch. 438, § 8; Laws, 2010, ch. 476, § 27, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “adjudged a person with an intellectual disability” for “adjudged mentally retarded.”

§ 41-19-17. Designation of North Mississippi Regional Center as state agency for carrying out federal acts pertaining to intellectual disabilities.

The North Mississippi Regional Center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America, now existing or at any time hereafter enacted, pertaining to intellectual disabilities.

SOURCES: Codes, 1942, § 6900-09; Laws, 1968, ch. 438, § 9; Laws, 1992, ch. 336, § 4; Laws, 2010, ch. 476, § 28, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “intellectual disabilities” for “mental retardation” and made a minor stylistic change.

FACILITIES AND SERVICES FOR INDIVIDUALS WITH MENTAL RETARDATION OR MENTAL ILLNESS

SEC.	
41-19-31.	Board of supervisors may select regional districts.
41-19-33.	Regional commissions; establishment; duties and authority.
41-19-37.	Location of facilities or services in regions.
41-19-38.	Mental health facilities subject to local zoning ordinances or regulations.
41-19-39.	Financial support for facilities or services for individuals with mental illness or intellectual disability; tax levy.
41-19-41.	Commitment of patients to regional mental health or intellectual disability centers.
41-19-43.	Expenses of chancery clerk and sheriff.

§ 41-19-31. Board of supervisors may select regional districts.

For the purpose of authorizing the establishment of mental illness and intellectual disability facilities and services in the State of Mississippi, the boards of supervisors of one or more counties are authorized to act singularly or as a group in the selection of a regional district by spreading upon their minutes by resolution such designation.

SOURCES: Codes, 1942, § 6909-57; Laws, 1966, ch. 477, § 1; Laws, 2010, ch. 476, § 29, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “intellectual disability facilities and services” for “mental retardation facilities and services” and made a minor stylistic change.

§ 41-19-33. Regional commissions; establishment; duties and authority.

(1) Each region so designated or established under Section 41-19-31 shall establish a regional commission to be composed of members appointed by the boards of supervisors of the various counties in the region. It shall be the duty of such regional commission to administer mental health/intellectual disability programs certified and required by the State Board of Mental Health and as specified in Section 41-4-1(2). In addition, once designated and established as provided hereinabove, a regional commission shall have the following authority and shall pursue and promote the following general purposes:

(a) To establish, own, lease, acquire, construct, build, operate and maintain mental illness, mental health, intellectual disability, alcoholism and general rehabilitative facilities and services designed to serve the needs of the people of the region so designated; provided that the services supplied by the regional commissions shall include those services determined by the Department of Mental Health to be necessary and may include, in addition to the above, services for persons with developmental and learning disabilities; for persons suffering from narcotic addiction and problems of drug abuse and drug dependence; and for the aging as designated and certified by the Department of Mental Health. Such regional mental health and intellectual disability commissions and other community service providers shall, on or before July 1 of each year, submit an annual operational plan to the Department of Mental Health for approval or disapproval based on the minimum standards and minimum required services established by the department for certification and itemize the services as specified in Section 41-4-1(2). As part of the annual operation plan required by Section 41-4-7(h) submitted by any regional community mental health center or by any other reasonable certification deemed acceptable by the department, the community mental health center shall state those services specified in Section 41-4-1(2) that it will provide and also those services that it will not provide. If the department finds deficiencies in the plan of any regional commission or community service provider based on the minimum standards and

minimum required services established for certification, the department shall give the regional commission or community service provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. After the six-month probationary period, if the department determines that the regional commission or community service provider still does not meet the minimum standards and minimum required services established for certification, the department may remove the certification of the commission or provider and from and after July 1, 2011, the commission or provider shall be ineligible for state funds from Medicaid reimbursement or other funding sources for those services. After the six-month probationary period, the Department of Mental Health may identify an appropriate community service provider to provide any core services in that county that are not provided by a community mental health center. However, the department shall not offer reimbursement or other accommodations to a community service provider of core services that were not offered to the decertified community mental health center for the same or similar services.

(b) To provide facilities and services for the prevention of mental illness, mental disorders, developmental and learning disabilities, alcoholism, narcotic addiction, drug abuse, drug dependence and other related handicaps or problems (including the problems of the aging) among the people of the region so designated, and for the rehabilitation of persons suffering from such illnesses, disorders, handicaps or problems as designated and certified by the Department of Mental Health.

(c) To promote increased understanding of the problems of mental illness, intellectual disabilities, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse and drug dependence and other related problems (including the problems of the aging) by the people of the region, and also to promote increased understanding of the purposes and methods of the rehabilitation of persons suffering from such illnesses, disorders, handicaps or problems as designated and certified by the Department of Mental Health.

(d) To enter into contracts and to make such other arrangements as may be necessary, from time to time, with the United States government, the government of the State of Mississippi and such other agencies or governmental bodies as may be approved by and acceptable to the regional commission for the purpose of establishing, funding, constructing, operating and maintaining facilities and services for the care, treatment and rehabilitation of persons suffering from mental illness, an intellectual disability, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse, drug dependence and other illnesses, disorders, handicaps and problems (including the problems of the aging) as designated and certified by the Department of Mental Health.

(e) To enter into contracts and make such other arrangements as may be necessary with any and all private businesses, corporations, partnerships, proprietorships or other private agencies, whether organized for profit

or otherwise, as may be approved by and acceptable to the regional commission for the purpose of establishing, funding, constructing, operating and maintaining facilities and services for the care, treatment and rehabilitation of persons suffering from mental illness, an intellectual disability, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse, drug dependence and other illnesses, disorders, handicaps and problems (including the problems of the aging) relating to minimum services established by the Department of Mental Health.

(f) To promote the general mental health of the people of the region.

(g) To pay the administrative costs of the operation of the regional commissions, including per diem for the members of the commission and its employees, attorney's fees, if and when such are required in the opinion of the commission, and such other expenses of the commission as may be necessary. The Department of Mental Health standards and audit rules shall determine what administrative cost figures shall consist of for the purposes of this paragraph. Each regional commission shall submit a cost report annually to the Department of Mental Health in accordance with guidelines promulgated by the department.

(h) To employ and compensate any personnel that may be necessary to effectively carry out the programs and services established under the provisions of the aforesaid act, provided such person meets the standards established by the Department of Mental Health.

(i) To acquire whatever hazard, casualty or workers' compensation insurance that may be necessary for any property, real or personal, owned, leased or rented by the commissions, or any employees or personnel hired by the commissions.

(j) To acquire professional liability insurance on all employees as may be deemed necessary and proper by the commission, and to pay, out of the funds of the commission, all premiums due and payable on account thereof.

(k) To provide and finance within their own facilities, or through agreements or contracts with other local, state or federal agencies or institutions, nonprofit corporations, or political subdivisions or representatives thereof, programs and services for persons with mental illness, including treatment for alcoholics, and promulgating and administering of programs to combat drug abuse and programs for services for persons with an intellectual disability.

(l) To borrow money from private lending institutions in order to promote any of the foregoing purposes. A commission may pledge collateral, including real estate, to secure the repayment of money borrowed under the authority of this paragraph. Any such borrowing undertaken by a commission shall be on terms and conditions that are prudent in the sound judgment of the members of the commission, and the interest on any such loan shall not exceed the amount specified in Section 75-17-105. Any money borrowed, debts incurred or other obligations undertaken by a commission, regardless of whether borrowed, incurred or undertaken before or after the effective date of this act, shall be valid, binding and enforceable if it or they

are borrowed, incurred or undertaken for any purpose specified in this section and otherwise conform to the requirements of this paragraph.

(m) To acquire, own and dispose of real and personal property. Any real and personal property paid for with state and/or county appropriated funds must have the written approval of the Department of Mental Health and/or the county board of supervisors, depending on the original source of funding, before being disposed of under this paragraph.

(n) To enter into managed care contracts and make such other arrangements as may be deemed necessary or appropriate by the regional commission in order to participate in any managed care program. Any such contract or arrangement affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(o) To provide facilities and services on a discounted or capitated basis. Any such action when affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(p) To enter into contracts, agreements or other arrangements with any person, payor, provider or other entity, under which the regional commission assumes financial risk for the provision or delivery of any services, when deemed to be necessary or appropriate by the regional commission. Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(q) To provide direct or indirect funding, grants, financial support and assistance for any health maintenance organization, preferred provider organization or other managed care entity or contractor, where such organization, entity or contractor is operated on a nonprofit basis. Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(r) To form, establish, operate, and/or be a member of or participant in, either individually or with one or more other regional commissions, any managed care entity as defined in Section 83-41-403(c). Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(s) To meet at least annually with the board of supervisors of each county in its region for the purpose of presenting its total annual budget and total mental health/intellectual disability services system. The commission shall submit an annual report on the adult mental health services, children mental health services and intellectual disability services required by the State Board of Mental Health.

(t) To provide alternative living arrangements for persons with serious mental illness, including, but not limited to, group homes for persons with chronic mental illness.

(u) To make purchases and enter into contracts for purchasing in compliance with the public purchasing law, Sections 31-7-12 and 31-7-13, with compliance with the public purchasing law subject to audit by the State Department of Audit.

(v) To insure that all available funds are used for the benefit of persons with mental illness, persons with an intellectual disability, substance abusers and persons with developmental disabilities with maximum efficiency and minimum administrative cost. At any time a regional commission, and/or other related organization whatever it may be, accumulates surplus funds in excess of one-half ($\frac{1}{2}$) of its annual operating budget, the entity must submit a plan to the Department of Mental Health stating the capital improvements or other projects that require such surplus accumulation. If the required plan is not submitted within forty-five (45) days of the end of the applicable fiscal year, the Department of Mental Health shall withhold all state appropriated funds from such regional commission until such time as the capital improvement plan is submitted. If the submitted capital improvement plan is not accepted by the department, the surplus funds shall be expended by the regional commission in the local mental health region on group homes for persons with mental illness, persons with an intellectual disability, substance abusers, children or other mental health/intellectual disability services approved by the Department of Mental Health.

(w) Notwithstanding any other provision of law, to fingerprint and perform a criminal history record check on every employee or volunteer. Every employee or volunteer shall provide a valid current social security number and/or driver's license number that will be furnished to conduct the criminal history record check. If no disqualifying record is identified at the state level, fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check.

(x) In general to take any action which will promote, either directly or indirectly, any and all of the foregoing purposes.

(2) The types of services established by the State Department of Mental Health that must be provided by the regional mental health/intellectual disability centers for certification by the department, and the minimum levels and standards for those services established by the department, shall be provided by the regional mental health/intellectual disability centers to children when such services are appropriate for children, in the determination of the department.

SOURCES: Codes, 1942, § 6909-58; Laws, 1966, ch. 477, § 2; Laws, 1973, ch. 384, § 1; Laws, 1984, ch. 495, § 16; reenacted and amended, Laws, 1985, ch. 474, § 25; Laws, 1986, ch. 438, § 25; Laws, 1987, ch. 483, § 26; Laws, 1988, ch. 442, § 23; Laws, 1989, ch. 537, § 22; Laws, 1990, ch. 518, § 23; Laws, 1991, ch. 618, § 22; Laws, 1992, ch. 491 § 23; Laws, 1995, ch. 410, § 1; Laws, 1996, ch. 342, § 1; Laws, 1996, ch. 463, § 1; Laws, 1997, ch. 587, § 3, eff July 1, 1997; Laws, 2003, ch. 415, § 1; Laws, 2010, ch. 476, § 30; Laws, 2011, ch. 501, § 5, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 501, § 1, effective July 1, 2011, provides:

“SECTION 1. This act shall be known and may be cited as the ‘Rose Isabel Williams Mental Health Reform Act of 2011.’”

Amendment Notes — The 2010 amendment substituted “intellectual disability” for “mental retardation” throughout the section; and rewrote the first and last sentences of (1)(v).

The 2011 amendment inserted “and required” and “and as specified in Section 41-4-1(2)” near the end of the second sentence in (1); added the last six sentences of (1)(a); and added the last sentence in (1)(s).

ATTORNEY GENERAL OPINIONS

The Northeast Mental Health-Mental Retardation Commission, Region III, is authorized to provide pharmacy services to its clients as well as to its employees as a fringe benefit, but not to the general public, as long as such services are autho-

rized by the Mississippi State Board of Pharmacy. Smith, February 9, 2007, A.G. Op. #07-00047, 2007 Miss. AG LEXIS 21 (modifying Smith, A.G. Op. #06-00531, 2006 Miss. AG LEXIS 397).

§ 41-19-37. Location of facilities or services in regions.

The location of any mental illness and intellectual disability facilities or services in any of the regions shall be determined by the regional commission. However, such location and such services shall not conflict with the state plan for services or facilities developed by the Department of Mental Health.

SOURCES: Codes, 1942, § 6909-60; Laws, 1966, ch. 477, § 4; Laws, 1974, ch. 567, § 12; Laws, 2010, ch. 476, § 31, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “intellectual disability” for “mental retardation.”

§ 41-19-38. Mental health facilities subject to local zoning ordinances or regulations.

Any regional mental health or intellectual disability commission established according to the provisions of Section 41-19-31 et seq. shall not construct or operate any facility in an area in violation of any local zoning ordinances or regulations.

SOURCES: Laws, 1995, ch. 528, § 16; Laws, 2010, ch. 476, § 32, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “intellectual disability” for “mental retardation.”

§ 41-19-39. Financial support for facilities or services for individuals with mental illness or intellectual disability; tax levy.

After a plan for mental illness and intellectual disability facilities or services has been submitted by any regional commission and approved by the Department of Mental Health, the regional commission may request the boards of supervisors of the various counties in the region to levy a special tax for the construction, operation and maintenance of those mental illness and intellectual disability facilities or services in such region. The boards of supervisors of the counties desiring to participate in the program in each region are authorized to use any available funds and, if necessary, to levy a special tax, not to exceed two (2) mills, for the construction, operation and maintenance of the mental illness and intellectual disability facilities or services provided for and authorized in Sections 41-19-31 through 41-19-39.

The governing authority of any municipality in the region may, upon resolution spread upon its minutes, make a voluntary contribution for the construction, operation or maintenance of the mental illness and intellectual disability facilities in the region in which the municipality lies.

In addition to the purposes for which the county tax levies and municipal contributions may be used as authorized under this section, the county tax levies and municipal contributions may also be used for repayment of any loans from private lending institutions made by the commission under the authority of Section 41-19-33(l).

SOURCES: Codes, 1942, § 6909-61; Laws, 1966, ch. 477, § 4; Laws, 1972, ch. 307, § 1; Laws, 1974, ch. 567, § 13; Laws, 1995, ch. 410, § 2; Laws, 2010, ch. 476, § 33, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “intellectual disability” for “mental retardation” throughout the section; and made minor stylistic changes.

§ 41-19-41. Commitment of patients to regional mental health or intellectual disability centers.

Any regional mental health or intellectual disability facility or service established and operated according to the provisions set forth in Sections 41-19-31 through 41-19-39, is eligible to admit and treat patients committed by either the chancellors or chancery clerks in the same manner as is provided by the laws of Mississippi for commitment to the state mental institutions.

SOURCES: Codes, 1942, § 6909-71; Laws, 1968, ch. 439, § 1; Laws, 2010, ch. 476, § 34, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “intellectual disability” for “mental retardation.”

§ 41-19-43. Expenses of chancery clerk and sheriff.

Whenever it is necessary to commit and transport any eligible patient to a regional mental health or intellectual disability facility for treatment or care, the chancery clerk and sheriff shall be entitled to expenses as provided for by the laws of Mississippi for commitment and transportation to state mental institutions.

SOURCES: Codes, 1942, § 6909-72; Laws, 1968, ch. 439, § 2; Laws, 2010, ch. 476, § 35, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “intellectual disability” for “mental retardation.”

**CONTRIBUTIONS BY CERTAIN LOCAL GOVERNMENTS TO
NONPROFIT CORPORATIONS ASSISTING CHILDREN WITH MENTAL
RETARDATION**

SEC.
41-19-91. Certain counties and municipalities may contribute to nonprofit corporations operating programs for children with an intellectual disability.

§ 41-19-91. Certain counties and municipalities may contribute to nonprofit corporations operating programs for children with an intellectual disability.

(1) Any board of supervisors, mayor and board of selectmen of any city in which Mississippi State Highway No. 50 and United States Highway No. 45 Alternate intersect, are authorized and empowered, in their discretion, to contribute a sum not to exceed Ten Thousand Dollars (\$10,000.00) each to a nonprofit corporation, the purpose of which is to develop and operate programs for children with an intellectual disability. The contribution may be made from the general fund of such county and/or city wherein funds may be available.

(2) To acquire the funds in which to make such contribution, the board of supervisors of such county and/or mayor and board of selectmen of such city are authorized and empowered, in its discretion, to set aside, appropriate and expend monies from the general fund.

SOURCES: Laws, 1973, ch. 454, §§ 1-3; Laws, 1986, ch. 400, § 23; Laws, 2010, ch. 476, § 36, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “children with an intellectual disability” for “mentally retarded children”; and made minor stylistic changes.

ELLISVILLE STATE SCHOOL

SEC.
41-19-103. Establishment of the Ellisville State School.
41-19-116. Criminal offenses and penalties.

41-19-118. Designation of Ellisville State School as state agency for carrying out purposes of Congressional acts pertaining to intellectual disabilities.

§ 41-19-103. Establishment of the Ellisville State School.

The Ellisville State School established by Chapter 210, Laws of Mississippi 1920, is recognized as now existing and shall hereafter be known under the name of Ellisville State School for the care and treatment of persons with an intellectual disability. The school shall have the power to receive and hold property, real, personal and mixed, as a body corporate. The school shall be under the direction and control of the State Board of Mental Health.

SOURCES: Codes, Hemingway's 1921 Supp. § 5728c; 1930, § 7270; 1942, § 6765; Laws, 1920, ch. 210; Laws, 1930, ch. 30; Laws, 2008, ch. 442, § 43; Laws, 2010, ch. 476, § 37, eff from and after passage (approved Apr. 1, 2010.)

Editor's Note — Laws of 2011, ch. 447, § 3, provides:

"SECTION 3. Ellisville State School, by and through the State Board of Mental Health, shall convey without compensation to the Mississippi Transportation Commission all of its right, title and interest in certain real property hereinafter labeled as Warranty, such conveyance being located in Jones County, Mississippi, described more specifically as follows:

"WARRANTY

"INDEXING INSTRUCTIONS: SE $\frac{1}{4}$ of the SW $\frac{1}{4}$; NW $\frac{1}{4}$ of the SE $\frac{1}{4}$; NE $\frac{1}{4}$ of the SE $\frac{1}{4}$; SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 8, Township 7 North, Range 12 West. AND

"SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 9, Township 7 North, Range 12 West, First Judicial District, Jones County, Mississippi.

"AND

"SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 9, Township 7 North, Range 12 West, First Judicial District, Jones County, Mississippi.

"AND

"NE $\frac{1}{4}$ of the SE $\frac{1}{4}$; SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 8 and SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 9, all in Township 7 North, Range 12 West, First Judicial District, Jones County, Mississippi.

"Exhibit "A"

"COMMENCE AT THE NW CORNER OF THE NW $\frac{1}{4}$ OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN SOUTH A DISTANCE OF 1,701.15 FEET; THENCE RUN EAST A DISTANCE OF 457.64 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN NORTH 06° 50' 15" EAST A DISTANCE OF 243.08 FEET; THENCE RUN SOUTH 85° 51' 04" EAST A DISTANCE OF 20.92 FEET; THENCE RUN SOUTH 44° 29' 44" EAST A DISTANCE OF 113.45 FEET; THENCE RUN SOUTH 39° 08' 16" WEST A DISTANCE OF 204.88 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 0.3235 ACRES, AND BEING A PART OF THE SW $\frac{1}{4}$ OF THE NW $\frac{1}{4}$ OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH.

"Exhibit "B"

"COMMENCE AT THE SE CORNER OF THE SE $\frac{1}{4}$ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN NORTH A DISTANCE OF 2,231.51 FEET; THENCE RUN WEST A DISTANCE OF 813.18 FEET TO THE POINT OF BEGINNING OF THE

LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN NORTH 60° 54' 31" EAST A DISTANCE OF 334.25 FEET; THENCE RUN NORTH 29° 05' 29" WEST A DISTANCE OF 10.00 FEET; THENCE RUN SOUTH 60° 54' 31" WEST A DISTANCE OF 334.25 FEET; THENCE RUN SOUTH 29° 05' 29" EAST A DISTANCE OF 10.00 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 0.0767 ACRES, AND BEING A PART OF THE NE $\frac{1}{4}$ OF THE SE $\frac{1}{4}$ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH.

"Exhibit "C"

"COMMENCE AT THE SE CORNER OF THE SE $\frac{1}{4}$ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN NORTH A DISTANCE OF 1,986.50 FEET; THENCE RUN WEST A DISTANCE OF 1,191.83 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN SOUTH 60° 54' 31" WEST A DISTANCE OF 150.00 FEET; THENCE RUN SOUTH 29° 05' 29" EAST A DISTANCE OF 10.00 FEET; THENCE RUN SOUTH 60° 54' 31" WEST A DISTANCE OF 300.00 FEET; THENCE RUN NORTH 29° 05' 29" WEST A DISTANCE OF 25.00 FEET; THENCE RUN SOUTH 60° 54' 31" WEST A DISTANCE OF 600.00 FEET; THENCE RUN NORTH 29° 05' 29" WEST A DISTANCE OF 25.00 FEET; THENCE RUN NORTH 60° 54' 31" EAST A DISTANCE OF 1,050.00 FEET; THENCE RUN SOUTH 29° 05' 29" EAST A DISTANCE OF 40.00 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 0.8264 ACRES, AND BEING A PART OF THE NW $\frac{1}{4}$ OF THE SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ OF THE SE $\frac{1}{4}$ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH.

"Exhibit "D"

"COMMENCE AT THE SE CORNER OF THE SE $\frac{1}{4}$ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN NORTH A DISTANCE OF 2,014.03 FEET; THENCE RUN WEST A DISTANCE OF 1,430.30 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN SOUTH 60° 54' 31" WEST A DISTANCE OF 780.00 FEET; THENCE RUN NORTH 29° 05' 29" WEST A DISTANCE OF 25.00 FEET; THENCE RUN NORTH 60° 54' 31" EAST A DISTANCE OF 175.00 FEET; THENCE RUN NORTH 29° 05' 29" WEST A DISTANCE OF 15.00 FEET; THENCE RUN NORTH 60° 54' 31" EAST A DISTANCE OF 140.00 FEET; THENCE RUN NORTH 29° 05' 29" WEST A DISTANCE OF 20.00 FEET; THENCE RUN NORTH 60° 54' 31" EAST A DISTANCE OF 110.00 FEET; THENCE RUN SOUTH 29° 05' 29" EAST A DISTANCE OF 35.00 FEET; THENCE RUN NORTH 60° 54' 31" EAST A DISTANCE OF 355.00 FEET; THENCE RUN SOUTH 29° 05' 29" EAST A DISTANCE OF 25.00 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 0.5843 ACRES, AND BEING A PART OF THE NW $\frac{1}{4}$ OF THE SE $\frac{1}{4}$ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH.

"Exhibit "E"

"COMMENCE AT THE SW CORNER OF THE SW $\frac{1}{4}$ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN EAST A DISTANCE OF 1,992.97 FEET; THENCE RUN NORTH A DISTANCE OF 796.35 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN NORTH 81° 10' 40" EAST A DISTANCE OF 277.83 FEET; THENCE RUN SOUTH 15° 55' 13" EAST A DISTANCE OF 62.67 FEET; THENCE RUN NORTH 67° 17' 28" EAST A DISTANCE OF 80.56 FEET; THENCE RUN NORTH 15° 55' 13" WEST A DISTANCE OF 83.66

FEET; THENCE RUN NORTH 3505'56" EAST A DISTANCE OF 265.13 FEET; THENCE RUN SOUTH 60° 54' 31" WEST A DISTANCE OF 103.38 FEET; THENCE RUN WESTERLY ALONG A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 3,784.73 FEET, A CHORD BEARING OF SOUTH 57° 15'34" WEST, AND A CHORD DISTANCE OF 481.76 FEET, A DISTANCE OF 482.09 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 1.0454 ACRES, AND BEING A PART OF THE SE ¼ OF THE SW ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH.

"Exhibit "F"

"COMMENCE AT THE SE CORNER OF THE SE ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN WEST A DISTANCE OF 431.96 FEET; THENCE RUN NORTH A DISTANCE OF 2,581.65 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN NORTH 36° 11' 13" WEST A DISTANCE OF 75.00 FEET; THENCE RUN EASTERLY ALONG A CURVE THAT ARCS TO THE LEFT, SAID CURVE HAVING A RADIUS OF 1,311.61 FEET, A CHORD BEARING OF NORTH 50° 31'22" EAST, AND A CHORD DISTANCE OF 150.56 FEET, A DISTANCE OF 150.64 FEET; THENCE RUN SOUTH 42° 46' 03" EAST A DISTANCE OF 75.00 FEET; THENCE RUN WESTERLY ALONG A CURVE THAT ARCS TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 1,386.61 FEET, A CHORD BEARING OF SOUTH 50° 31' 22" WEST, AND A CHORD DISTANCE OF 159.17 FEET, A DISTANCE OF 159.26 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 0.2668 ACRES, AND BEING A PART OF THE NE ¼ OF THE SE ¼ AND THE SE ¼ OF THE NE ¼ OF SECTION 8, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH.

"Exhibit "G"

"COMMENCE AT THE NW CORNER OF THE NW ¼ OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI; THENCE RUN EAST A DISTANCE OF 103.06 FEET; THENCE RUN SOUTH A DISTANCE OF 2,295.30 FEET TO THE POINT OF BEGINNING OF THE LAND TO BE DESCRIBED; FROM SAID POINT OF BEGINNING, RUN SOUTH 50° 51' 44" EAST A DISTANCE OF 25.00 FEET; THENCE RUN SOUTH 3908'16" WEST A DISTANCE OF 75.00 FEET; THENCE RUN NORTH 50° 51' 44" WEST A DISTANCE OF 25.00 FEET; THENCE RUN NORTH 39° 08' 16" EAST A DISTANCE OF 75.00 FEET BACK TO THE POINT OF BEGINNING, CONTAINING 0.0430 ACRES, AND BEING A PART OF THE SW ¼ OF THE NW ¼ OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 12 WEST, FIRST JUDICIAL DISTRICT, JONES COUNTY, MISSISSIPPI. BEARINGS NOTED IN THIS DESCRIPTION ARE REFERENCED TO MISSISSIPPI STATE PLANE EAST ZONE GRID NORTH."

Amendment Notes — The 2010 amendment substituted "an intellectual disability" for "mental retardation."

§ 41-19-116. Criminal offenses and penalties.

Any person who (a) knowingly and unlawfully or improperly causes a person to be adjudged to be a person with an intellectual disability, (b) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of Ellisville State School, or (c) unlawfully brings any firearm, deadly weapon or explosive into the school or its grounds, or passes any thereof to a resident, employee or officer of the school, is guilty of a

misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Two Hundred Dollars (\$200.00), imprisonment for not less than six (6) months, or both.

SOURCES: Laws, 2008, ch. 442, § 47; Laws, 2010, ch. 476, § 38, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “person with an intellectual disability” for “person of mental retardation.”

§ 41-19-118. Designation of Ellisville State School as state agency for carrying out purposes of Congressional acts pertaining to intellectual disabilities.

Ellisville State School is designated as a state agency for carrying out the purposes of any act of the Congress of the United States, now existing or at any time hereafter enacted, pertaining to intellectual disabilities.

SOURCES: Laws, 2008, ch. 442, § 48; Laws, 2010, ch. 476, § 39, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “intellectual disabilities” for “mental retardation.”

SOUTH MISSISSIPPI REGIONAL CENTER

- | | |
|------------|---|
| SEC. | |
| 41-19-141. | Declaration of purpose. |
| 41-19-147. | Management and operation of center. |
| 41-19-155. | Penalties. |
| 41-19-157. | Designation of South Mississippi Regional Center as state agency for carrying out federal acts pertaining to intellectual disabilities. |

§ 41-19-141. Declaration of purpose.

The purpose of Sections 41-19-141 through 41-19-157 is to create, construct, equip and maintain a center to be located in South Mississippi for the care and treatment of persons with an intellectual disability, which shall be known as the South Mississippi Regional Center.

SOURCES: Laws, 1974, ch. 417, § 1; Laws, 1992, ch. 336, § 5; Laws, 2010, ch. 476, § 40, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “persons with an intellectual disability” for “the mentally retarded.”

§ 41-19-147. Management and operation of center.

The center shall be administered by the board of trustees of mental institutions, as provided for in Sections 41-5-31 through 41-5-55, inclusive, and all subsequent laws enacted which define the powers and authority of the

board. Provisions relating to the admission and care of residents and patients provided for hereinafter shall apply to all institutions for persons with an intellectual disability administered by the board, unless they are in conflict with the provisions of the above-mentioned laws.

SOURCES: Laws, 1974, ch. 417, § 4; Laws, 2010, ch. 476, § 41, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “persons with an intellectual disability” for “the mentally retarded.”

§ 41-19-155. Penalties.

Any person who: (1) under the provisions of Sections 41-19-141 through 41-19-157 knowingly and unlawfully or improperly causes a person to be adjudged to be a person with an intellectual disability; (2) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the center; or (3) unlawfully brings any firearm, deadly weapon or explosive into the center or its grounds or passes any thereof to a resident, employee or officer of the center is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Two Hundred Dollars (\$200.00), imprisonment for not more than one (1) year, or both.

SOURCES: Laws, 1974, ch. 417, § 8; Laws, 2010, ch. 476, § 42, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “to be a person with an intellectual disability” for “mentally retarded.”

§ 41-19-157. Designation of South Mississippi Regional Center as state agency for carrying out federal acts pertaining to intellectual disabilities.

The South Mississippi Regional Center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America now existing or at any time hereafter enacted pertaining to intellectual disabilities.

SOURCES: Laws, 1974, ch. 417, § 9; Laws, 1992, ch. 336, § 8; Laws, 2010, ch. 476, § 43, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “intellectual disabilities” for “mental retardation”; and made a minor stylistic change.

BOSWELL REGIONAL CENTER

SEC.

- | | |
|------------|---|
| 41-19-201. | Declaration of purpose. |
| 41-19-203. | Location, construction, equipping and administration of center. |
| 41-19-205. | Eligibility for admission. |

- 41-19-207. Admission procedures.
 41-19-211. Penalties.
 41-19-213. Designation of Boswell Regional Center as state agency for carrying out federal acts pertaining to intellectual disabilities.

§ 41-19-201. Declaration of purpose.

The purpose of Sections 41-19-201 through 41-19-213 is to create, construct, equip and maintain a center located in Central Mississippi for the care and treatment of persons with an intellectual disability, which shall be known as the Boswell Regional Center. Sections 41-19-201 through 41-19-213 shall not supersede Section 41-5-44, but shall be supplemental to that section.

SOURCES: Laws, 1982, ch. 360, § 1(1); Laws, 1992, ch. 336, § 9; Laws, 2010, ch. 476, § 44, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “persons with an intellectual disability” for “the mentally retarded.”

§ 41-19-203. Location, construction, equipping and administration of center.

The center shall be located on the site of the Tuberculosis Sanatorium of Mississippi.

With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the state building commission is authorized to construct and equip the necessary residential and service buildings and other facilities for the care and treatment of persons with an intellectual disability. The general design of the center and all construction plans shall be approved and recommended by the State Board of Mental Health.

The center shall be administered by the State Board of Mental Health.

SOURCES: Laws, 1982, ch. 360, § 1 (2)-(4); Laws, 1992, ch. 336, § 10; Laws, 2010, ch. 476, § 45, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “of persons with an intellectual disability” for “of the mentally retarded”; and made a minor stylistic change.

§ 41-19-205. Eligibility for admission.

A person may be deemed eligible for admission to the center if:

(a) His parents or guardian or person in loco parentis has resided in the state not less than one (1) year prior to the date of admission; and

(b) He is at least five (5) years of age and has such an intellectual disability that he is incapable of managing himself or his affairs, or he has an intellectual disability to the extent that special care, training and education provided at the center will enable him to better function in society;
 or

(c) He is committed to the center by the chancery court in the manner hereinafter provided; or

(d) He is under five (5) years of age and is approved for admission by the board of mental health, upon the recommendation of the director, because of having an exceptional handicap.

SOURCES: Laws, 1982, ch. 360, § 2; Laws, 1990, ch. 370, § 1; Laws, 1992, ch. 336, § 11; Laws, 2010, ch. 476, § 46, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment, in (b), substituted “has such an intellectual disability” for “he is so mentally retarded,” and “or he has an intellectual disability to the extent” for “or he is retarded to the extent.”

§ 41-19-207. Admission procedures.

Admission of an eligible person to the center shall be as follows:

(a) The parents or guardian or person in loco parentis of any person thought to have an intellectual disability may file an application for admission to the center. Such application shall be made on an official form approved or furnished by the center. Within ten (10) days after the admission of the person to the center, the director shall have him examined by a qualified physician or psychologist or both. If he is found not to have an intellectual disability, the parents, guardian or person in loco parentis shall be required to take him from the center. The results of the examination shall be entered upon the person's record if he is found to have an intellectual disability and eligible to remain at the center.

(b) If any person with an intellectual disability is afflicted to the extent that he needs care, supervision or control, or to the extent that he is likely to become dangerous or a menace if left at large, any relative or any citizen of the State of Mississippi may make affidavit of such fact and shall file such affidavit with the clerk of the chancery court of the county of such person's residence or with the clerk of the chancery court of any county in which such person might be found. When such affidavit is received by the chancery clerk, he shall follow the same procedure for commitment to the center as is provided for in state law for the commitment of persons to the state mental hospitals.

(c) Persons with an intellectual disability may be admitted to the center by the director for a time sufficient for diagnosis, evaluation and training without formal commitment, provided such person is referred by another state agency or department. In such cases the person so admitted shall be subject to all regulations governing the center for such time as he remains.

(d) The final determination of admission to the center shall be the decision of the director of the center.

SOURCES: Laws, 1982, ch. 360, § 3; Laws, 1990, ch. 370, § 2; Laws, 1992, ch. 336, § 12; Laws, 2010, ch. 476, § 47, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment inserted “an” in the introductory language; substituted “to have an intellectual disability” for “to be mentally retarded” throughout (a); substituted “If any person with an intellectual disability” for “If any mentally retarded person” at the beginning of (b); and substituted “Persons with an intellectual disability” for “Mentally retarded persons” at the beginning of (c).

§ 41-19-211. Penalties.

Any person who (a) under the provisions of Section 41-19-207, knowingly and unlawfully or improperly causes a person to be adjudged to be a person with an intellectual disability, (b) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the center, or (c) unlawfully brings any firearm, deadly weapon or explosive into the center or its grounds, or passes any thereof to a resident, employee or officer of the center, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00), imprisonment for not less than six (6) months nor more than one (1) year, or both.

SOURCES: Laws, 1982, ch. 360, § 5; Laws, 2010, ch. 476, § 48, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “to be a person with an intellectual disability” for “mentally retarded.”

§ 41-19-213. Designation of Boswell Regional Center as state agency for carrying out federal acts pertaining to intellectual disabilities.

The Boswell Regional Center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America now existing or at any time hereafter enacted pertaining to intellectual disabilities.

SOURCES: Laws, 1982, ch. 360, § 6; Laws, 1992, ch. 336, § 14; Laws, 2010, ch. 476, § 49, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “intellectual disabilities” for “mental retardation”; and made a minor stylistic change.

HUDSPETH REGIONAL CENTER

SEC.

- 41-19-231. Purpose of Sections 41-19-231 through 41-19-245.
- 41-19-235. Department of finance and administration to construct and equip necessary facilities; State board of mental health to administer center.
- 41-19-237. Eligibility for admission to center.
- 41-19-239. Admission procedures.
- 41-19-243. Criminal offenses.
- 41-19-245. Center designated state agency.

§ 41-19-231. Purpose of Sections 41-19-231 through 41-19-245.

The purpose of Sections 41-19-231 through 41-19-245 is to create, construct, equip and maintain a center located in Central Mississippi for the care and treatment of persons with an intellectual disability, which shall be known as the Hudspeth Regional Center.

SOURCES: Laws, 1990, ch. 475, § 1; Laws, 1992, ch. 336, § 15; Laws, 2010, ch. 476, § 50, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “persons with an intellectual disability” for “the mentally retarded.”

§ 41-19-235. Department of finance and administration to construct and equip necessary facilities; State board of mental health to administer center.

With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the Department of Finance and Administration is authorized to construct and equip the necessary residential and service buildings and other facilities for the care and treatment of persons with an intellectual disability. The general design of the center and all construction plans shall be approved and recommended by the State Board of Mental Health.

The center shall be administered by the State Board of Mental Health.

SOURCES: Laws, 1990, ch. 475, § 3; Laws, 2010, ch. 476, § 51, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “persons with an intellectual disability” for “the mentally retarded”; and made a minor stylistic change.

§ 41-19-237. Eligibility for admission to center.

A person may be deemed eligible for admission to the center if:

(a) His parents or guardian or person in loco parentis has resided in the state not less than one (1) year before the date of admission; and

(b) He is at least five (5) years of age and has such an intellectual disability that he is incapable of managing himself or his affairs, or he has an intellectual disability to the extent that special care, training and education provided at the center will enable him to better function in society; or

(c) He is committed to the center by the chancery court in the manner hereinafter provided; or

(d) He is under five (5) years of age and is approved for admission by the Board of Mental Health, upon the recommendation of the director, because of having an exceptional handicap.

SOURCES: Laws, 1990, ch. 475, § 4; Laws, 1992, ch. 336, § 17; Laws, 2010, ch. 476, § 52, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment, in (b), substituted “has such an intellectual disability” for “is so mentally retarded,” and “or he has an intellectual disability to the extent” for “or he is retarded to the extent.”

§ 41-19-239. Admission procedures.

Admission of eligible persons to the center shall be as follows:

(a) The parents or guardian or person in loco parentis of any person thought to have an intellectual disability may file an application for admission to the center. Such application shall be made on an official form approved or furnished by the center. Within ten (10) days after the admission of the person to the center, the director shall have him examined by a qualified physician or psychologist or both. If he is found not to have an intellectual disability, the parents, guardian or person in loco parentis shall be required to take him from the center. The results of the examination shall be entered upon the person's record if he is found to have an intellectual disability and eligible to remain at the center.

(b) If any person with an intellectual disability is afflicted to the extent that he needs care, supervision or control, or to the extent that he is likely to become dangerous or a menace if left at large, any relative or any citizen of the State of Mississippi may make affidavit of such fact and shall file such affidavit with the clerk of the chancery court of the county of such person's residence or with the clerk of the chancery court of any county in which such person might be found. When such affidavit is received by the chancery clerk, he shall follow the same procedure for commitment to the center as is provided for in state law for the commitment of persons to the state mental hospitals.

(c) Persons with an intellectual disability may be admitted to the center by the director for a time sufficient for diagnosis, evaluation and training without formal commitment, provided such person is referred by another state agency or department. In such cases the person so admitted shall be subject to all regulations governing the center for such time as he remains.

(d) The final determination of admission to the center shall be the decision of the director of the center.

SOURCES: Laws, 1990, ch. 475, § 5; Laws, 1992, ch. 336, § 18; Laws, 2010, ch. 476, § 53, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “to have an intellectual disability” for “to be mentally retarded” throughout (a); substituted “If any person with an intellectual disability” for “If any mentally retarded person” at the beginning of (b); and substituted “Persons with an intellectual disability” for “Mentally retarded persons” at the beginning of (c).

§ 41-19-243. Criminal offenses.

Any person who (a) under the provisions of Section 41-19-237, knowingly and unlawfully or improperly causes a person to be adjudged to be a person with an intellectual disability, (b) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the center, or (c) unlawfully brings any firearm, deadly weapon or explosive into the center or its grounds, or passes any thereof to a resident, employee or officer of the center, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00), imprisonment for not less than six (6) months nor more than one (1) year, or both.

SOURCES: Laws, 1990, ch. 475, § 7; Laws, 2010, ch. 476, § 54, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “to be a person with an intellectual disability” for “mentally retarded” in (a); and inserted “a” following “passes any thereof to” in (c).

§ 41-19-245. Center designated state agency.

The Hudspeth Regional Center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States of America now existing or at any time hereafter enacted pertaining to intellectual disabilities.

SOURCES: Laws, 1990, ch. 475, § 8; Laws, 1992, ch. 336, § 20; Laws, 2010, ch. 476, § 55, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “intellectual disabilities” for “mental retardation”; and made a minor stylistic change.

MISSISSIPPI ADOLESCENT CENTER IN BROOKHAVEN

SEC.

41-19-301. Mississippi Adolescent Center for juveniles with an intellectual disability in Brookhaven; admissions; construction; funding.

§ 41-19-301. Mississippi Adolescent Center for juveniles with an intellectual disability in Brookhaven; admissions; construction; funding.

(1) The Mississippi Adolescent Center located in Brookhaven, Mississippi, is recognized as now existing and shall be for the care and treatment of persons with an intellectual disability. The facility shall have the power to receive and hold property, real, personal and mixed, as a body corporate. The facility shall be under the direction and control of the State Board of Mental Health.

(2) Admissions shall be limited to adolescents with an intellectual disability who have been committed to the center by a youth court judge or chancellor

in accordance with Section 41-21-109, or who are voluntarily admitted to the center.

(3) The Mississippi Adolescent Center is authorized to establish and operate a school to meet the educational needs of its clients.

(4) With funds provided by the Legislature, by direct appropriation or authorized bond issue, with federal matching funds, or with any other available funds, the Bureau of Building, Grounds and Real Property Management may construct and equip the necessary residential and service buildings and other facilities to care for the residents of the Mississippi Adolescent Center. The general design of the facility and all construction plans shall be approved and recommended by the State Department of Mental Health.

(5) The Mississippi Adolescent Center shall be administered by the State Board of Mental Health. Provisions relating to the admission and care of residents at the facility shall be promulgated by the board.

(6) Persons admitted to the Mississippi Adolescent Center shall be assessed support and maintenance costs in accordance with the provisions of the state reimbursement laws as they apply to other state institutions.

(7) Any person who (a) knowingly and unlawfully or improperly causes a person to be adjudged to be a person with an intellectual disability, (b) procures the escape of a legally committed resident or knowingly conceals an escaped legally committed resident of the facility, or (c) unlawfully brings any firearm, deadly weapon or explosive into the facility or its grounds, or passes any thereof to a resident, employee or officer of the school, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00), or more than Two Hundred Dollars (\$200.00), imprisonment for not less than six (6) months, or both.

(8) The Mississippi Adolescent Center is designated as a state agency for carrying out the purposes of any act of the Congress of the United States, now existing or at any time hereafter enacted, pertaining to intellectual disabilities.

SOURCES: Laws, 2002, ch. 528 , § 1; Laws, 2009, ch. 563, § 13; Laws, 2010, ch. 476, § 56, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “persons with an intellectual disability” for “persons with mental retardation” in (1); substituted “adolescents with an intellectual disability” for “mentally retarded adolescents” in (2); substituted “adjudged to be a person with an intellectual disability” for “adjudged mentally retarded” in (7)(a); and substituted “intellectual disabilities” for “mental retardation” at the end of (8).

CHAPTER 21

Individuals with Mental Illness or an Intellectual Disability

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IN GENERAL

SEC.

41-21-35. Legal settlement of persons with mental illness and persons with an intellectual disability.

§ 41-21-35. Legal settlement of persons with mental illness and persons with an intellectual disability.

The rule as to the legal settlement of paupers shall apply in cases of persons with mental illness and persons with an intellectual disability.

SOURCES: Codes, 1880, § 667; 1892, § 2834; 1906, § 3218; Hemingway's 1917, § 5560; 1930, § 4575; 1942, § 6908; Laws, 2008, ch. 442, § 16; Laws, 2010, ch. 476, § 57, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “with an intellectual disability” for “with mental retardation.”

PERSONS IN NEED OF MENTAL TREATMENT

SEC.

41-21-61. Definitions.

41-21-63. Commitment proceedings; jurisdiction of chancery court and circuit court.

41-21-65. Affidavit for commitment; simplified affidavit form; penalty for filing intentionally false affidavit or filing affidavit in bad faith.

41-21-67. Person to be taken into custody; referral to crisis intervention team; appointment of examining physicians, or physician and psychologist, nurse practitioner or physician assistant; appointment of attorney; emergency patient status.

41-21-69. Examination by physicians or physician and psychologist, nurse practitioner or physician assistant; presence of attorney.

41-21-71. Procedure after examination; release or confinement pending hearing.

41-21-73. Procedures for hearing; evidence; witnesses; commitment; disposition and findings.

41-21-77. Commitment to state hospital or Veterans Administration facility.

41-21-79. Payment of costs.

41-21-82. Report prior to termination of initial commitment or discharge.

41-21-83. Hearing on need for further treatment.

41-21-87. Discharge at behest of director of treatment facility.

41-21-88. Release of individual acquitted on the ground of insanity and ordered confined to psychiatric hospital or institution; notice of release to be given to certain individuals.

41-21-103. Voluntary admissions for treatment.

41-21-109. Rehabilitation facilities for adolescents with mental illness or with an intellectual disability; establishment.

§ 41-21-61. Definitions.

As used in Sections 41-21-61 through 41-21-107, unless the context otherwise requires, the following terms defined have the meanings ascribed to them:

(a) "Chancellor" means a chancellor or a special master in chancery.

(b) "Clerk" means the clerk of the chancery court.

(c) "Director" means the chief administrative officer of a treatment facility or other employee designated by him as his deputy.

(d) "Interested person" means an adult, including, but not limited to, a public official, and the legal guardian, spouse, parent, legal counsel, adult, child next of kin, or other person designated by a proposed patient.

(e) "Person with mental illness" means any person who has a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which (i) is manifested by instances of grossly disturbed behavior or faulty perceptions; and (ii) poses a substantial likelihood of physical harm to himself or others as demonstrated by (A) a recent attempt or threat to physically harm himself or others, or (B) a failure to provide necessary food, clothing, shelter or medical care for himself, as a result of the impairment. "Person with mental illness" includes a person who, based on treatment history and other applicable psychiatric indicia, is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness to himself or others when his current mental illness limits or negates his ability to make an informed decision to seek or comply with recommended treatment. "Person with mental illness" does not include a person having only one or more of the following conditions: (1) epilepsy, (2) an intellectual disability, (3) brief periods of intoxication caused by alcohol or drugs, (4) dependence upon or addiction to any alcohol or drugs, or (5) senile dementia.

(f) "Person with an intellectual disability" means any person (i) who has been diagnosed as having substantial limitations in present functioning, manifested before age eighteen (18), characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two (2) or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work, and (ii) whose recent conduct is a result of having an intellectual disability and poses a substantial likelihood of physical harm to himself or others in that there has been (A) a recent attempt or threat to physically harm himself or others, or (B) a failure and inability to provide necessary food, clothing, shelter, safety, or medical care for himself.

(g) "Physician" means any person licensed by the State of Mississippi to practice medicine in any of its branches.

(h) "Psychologist" when used in Sections 41-21-61 through 41-21-107, means a licensed psychologist who has been certified by the State Board of Psychological Examiners as qualified to perform examinations for the purpose of civil commitment.

(i) "Treatment facility" means a hospital, community mental health center, or other institution qualified to provide care and treatment for persons with mental illness, persons with an intellectual disability or chemically dependent persons.

(j) “Substantial likelihood of bodily harm” means that:

(i) The person has threatened or attempted suicide or to inflict serious bodily harm to himself; or

(ii) The person has threatened or attempted homicide or other violent behavior; or

(iii) The person has placed others in reasonable fear of violent behavior and serious physical harm to them; or

(iv) The person is unable to avoid severe impairment or injury from specific risks; and

(v) There is substantial likelihood that serious harm will occur unless the person is placed under emergency treatment.

SOURCES: Laws, 1975, ch. 492, § 1; Laws, 1976, ch. 401, § 2; Laws, 1984, ch. 477, § 1; Laws, 1985, ch. 454, § 1; Laws, 1994, ch. 533, § 1; Laws, 1994, ch. 599, § 1; Laws, 2010, ch. 476, § 58; Laws, 2010, ch. 548, § 1, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 1 of ch. 548, Laws of 2010, effective July 1, 2010 (approved April 28, 2010), amended this section. Section 58 of ch. 476, Laws of 2010, effective upon passage (approved April 1, 2010), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Amendment Notes — The first 2010 amendment (ch. 476), in (e), substituted “Person with mental illness” for “Mentally ill person” everywhere it appears, and “an intellectual disability” for “mental retardation” in (2); in (f), substituted “Persons with an intellectual disability” for “Mentally retarded person” at the beginning, and “having an intellectual disability” for “mental retardation” in (ii); and substituted “persons with mental illness, persons with an intellectual disability” for “mentally ill, mentally retarded” in (i).

The second 2010 amendment (ch. 548) added (j).

§ 41-21-63. Commitment proceedings; jurisdiction of chancery court and circuit court.

(1) No person, other than persons charged with crime, shall be committed to a public treatment facility except under the provisions of Sections 41-21-61 through 41-21-107 or 43-21-611 or 43-21-315. However, nothing herein shall be construed to repeal, alter or otherwise affect the provisions of Section 35-5-31 or to affect or prevent the commitment of persons to the Veterans Administration or other agency of the United States under the provisions of and in the manner specified in those sections.

(2) The chancery court, or the chancellor in vacation shall have jurisdiction under Sections 41-21-61 through 41-21-107 except over persons with unresolved felony charges pending.

(3) The circuit court shall have jurisdiction under Sections 99-13-7, 99-13-9 and 99-13-11.

SOURCES: Laws, 1975, ch. 492, § 2; Laws, 1976, ch. 401, § 3; Laws, 1984, ch. 477, § 2; Laws, 1985, ch. 454, § 6; Laws, 1994, ch. 533, § 1; Laws, 1994, ch. 599, § 2; Laws, 1996, ch. 430, § 2; Laws, 2010, ch. 398, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (1), substituted “those sections” for “said sections” at the end; and in (2), substituted “unresolved felony charges pending” for “unresolved criminal charges pending.”

§ 41-21-65. Affidavit for commitment; simplified affidavit form; penalty for filing intentionally false affidavit or filing affidavit in bad faith.

(1) It is the intention of the Legislature that the filing of an affidavit under this section be a simple, inexpensive, uniform, and streamlined process for the purpose of facilitating and expediting the care of individuals in need of treatment.

(2) If any person is alleged to be in need of treatment, any relative of the person, or any interested person, may make affidavit of that fact and shall file the affidavit with the clerk of the chancery court of the county in which the person alleged to be in need of treatment resides; provided, however, that a chancellor or duly appointed special master may, in his or her discretion, hear the matter in the county in which the person may be found. The chancellor is authorized to immediately transfer the cause of a person alleged to be in need of treatment from the county where the person was found to the person's county of residence. The affidavit shall set forth the name and address of the proposed patient's nearest relatives, if known, and the reasons for the affidavit. The affidavit must contain factual descriptions of the proposed patient's recent behavior, including a description of the behavior, where it occurred, and over what period of time it occurred, if known. Each factual allegation may be supported by observations of witnesses named in the affidavit. Because of the emergency nature of those affidavits, at the affiant's request the chancery clerk shall provide the affiant with the one-page affidavit form developed by the Department of Mental Health, which the affiant may complete and file without the need for consulting or retaining an attorney. The Department of Mental Health, in consultation with the Mississippi Chancery Clerks' Association, shall develop a simple, one-page affidavit form for the use of affiants as provided in this subsection, which shall be used in all counties in the state. No chancery clerk shall require an affiant to retain an attorney for the filing of an affidavit under this section.

(3) The chancery clerk may charge the affiant a total fee for all services equal to the amount set out in Section 25-7-9(o), and the appropriate state and county assessments as required by law.

(4) The prohibition against charging the affiant other fees, expenses, or costs shall not preclude the imposition of monetary criminal penalties under

Section 41-21-107 or any other criminal statute, or the imposition by the chancellor of monetary penalties for contempt if the affiant is found to have filed an intentionally false affidavit or filed the affidavit in bad faith for a malicious purpose.

SOURCES: Laws, 1975, ch. 492, § 3(1); Laws, 1984, ch. 477, § 3; Laws, 2004, ch. 565, § 1; Laws, 2009, ch. 525, § 1; Laws, 2010, ch. 398, § 3, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote the section.

§ 41-21-67. Person to be taken into custody; referral to crisis intervention team; appointment of examining physicians, or physician and psychologist, nurse practitioner or physician assistant; appointment of attorney; emergency patient status.

(1) Whenever the affidavit provided for in Section 41-21-65 is filed with the chancery clerk, the clerk, upon direction of the chancellor of the court, shall issue a writ directed to the sheriff of the proper county to take into his or her custody the person alleged to be in need of treatment and to bring the person before the clerk or chancellor, who shall order pre-evaluation screening and treatment by the appropriate community mental health center established under Section 41-19-31 and for examination as set forth in Section 41-21-69. The order may provide where the person shall be held prior to the appearance before the clerk or chancellor. However, when the affidavit fails to set forth factual allegations and witnesses sufficient to support the need for treatment, the chancellor shall refuse to direct issuance of the writ. Reapplication may be made to the chancellor. If a pauper's affidavit is filed by a guardian for commitment of the ward of the guardian, the court shall determine if the ward is a pauper and if the ward is determined to be a pauper, the county of the residence of the respondent shall bear the costs of commitment, unless funds for those purposes are made available by the state.

In any county in which a Crisis Intervention Team has been established under the provisions of Sections 41-21-131 through 41-21-143, the clerk, upon the direction of the chancellor, may require that the person be referred to the Crisis Intervention Team for appropriate psychiatric or other medical services before the issuance of the writ.

(2) Upon issuance of the writ, the chancellor shall immediately appoint and summon two (2) reputable, licensed physicians or one (1) reputable, licensed physician and either one (1) psychologist, nurse practitioner or physician assistant to conduct a physical and mental examination of the person at a place to be designated by the clerk or chancellor and to report their findings to the clerk or chancellor. However, any nurse practitioner or physician assistant conducting the examination shall be independent from, and not under the supervision of, the other physician conducting the examination. In all counties in which there is a county health officer, the county

health officer, if available, may be one (1) of the physicians so appointed. Neither of the physicians nor the psychologist, nurse practitioner or physician assistant selected shall be related to that person in any way, nor have any direct or indirect interest in the estate of that person nor shall any full-time staff of residential treatment facilities operated directly by the State Department of Mental Health serve as examiner.

(3) The clerk shall ascertain whether the respondent is represented by an attorney, and if it is determined that the respondent does not have an attorney, the clerk shall immediately notify the chancellor of that fact. If the chancellor determines that the respondent for any reason does not have the services of an attorney, the chancellor shall immediately appoint an attorney for the respondent at the time the examiners are appointed.

(4) If the chancellor determines that there is probable cause to believe that the respondent is mentally ill and that there is no reasonable alternative to detention, the chancellor may order that the respondent be retained as an emergency patient at any licensed medical facility for evaluation by a physician, nurse practitioner or physician assistant and that a peace officer transport the respondent to the specified facility. If the community mental health center serving the county has partnered with Crisis Intervention Teams under the provisions of Sections 41-21-131 through 41-21-143, the order may specify that the licensed medical facility be a designated single point of entry within the county or within an adjacent county served by the community mental health center. If the person evaluating the respondent finds that the respondent is mentally ill and in need of treatment, the chancellor may order that the respondent be retained at the licensed medical facility or any other available suitable location as the court may so designate pending an admission hearing. If necessary, the chancellor may order a peace officer or other person to transport the respondent to that facility or suitable location. Any respondent so retained may be given such treatment as is indicated by standard medical practice. However, the respondent shall not be held in a hospital operated directly by the State Department of Mental Health, and shall not be held in jail unless the court finds that there is no reasonable alternative.

(5) Whenever a licensed psychologist, nurse practitioner or physician assistant who is certified to complete examinations for the purpose of commitment or a licensed physician has reason to believe that a person poses an immediate substantial likelihood of physical harm to himself or others or is gravely disabled and unable to care for himself by virtue of mental illness, as defined in Section 41-21-61(e), then the physician, psychologist, nurse practitioner or physician assistant may hold the person or may admit the person to and treat the person in a licensed medical facility, without a civil order or warrant for a period not to exceed seventy-two (72) hours. However, if the seventy-two-hour period begins or ends when the chancery clerk's office is closed, or within three (3) hours of closing, and the chancery clerk's office will be continuously closed for a time that exceeds seventy-two (72) hours, then the seventy-two-hour period is extended until the end of the next business day that the chancery clerk's office is open. The person may be held and treated as an

emergency patient at any licensed medical facility, available regional mental health facility, or crisis intervention center. The physician or psychologist, nurse practitioner or physician assistant who holds the person shall certify in writing the reasons for the need for holding.

If a person is being held and treated in a licensed medical facility, and that person decides to continue treatment by voluntarily signing consent for admission and treatment, the seventy-two-hour hold may be discontinued without filing an affidavit for commitment. Any respondent so held may be given such treatment as indicated by standard medical practice. Persons acting in good faith in connection with the detention of a person believed to be mentally ill shall incur no liability, civil or criminal, for those acts.

SOURCES: Laws, 1975, ch. 492, § 3(2, 3); Laws, 1984, ch. 477, § 4; Laws, 1985, ch. 454, § 2; Laws, 1994, ch. 533, § 3; Laws, 1994, ch. 599, § 3; Laws, 2000, ch. 493, § 1; Laws, 2008, ch. 513, § 1; Laws, 2010, ch. 398, § 4; Laws, 2010, ch. 476, § 59; Laws, 2010, ch. 548, § 2, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 4 of ch. 398, Laws of 2010, effective from and after July 1, 2010 (approved March 17, 2010), Section 59 of ch. 476, Laws of 2010, effective upon passage (approved April 1, 2010), and Section 2 of ch. 548, Laws of 2010, effective from and after July 1, 2010 (approved April 28, 2010), amended this section. The amendments to these sections do not conform and do not meet the Joint Legislative Committee on Compilation, Revision and Publication of Legislation criteria for integration. In this case, Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date. As set out above, this section reflects the language of Section 2 of ch. 548, Laws of 2010.

Amendment Notes — The first 2010 amendment (ch. 398) deleted “by a licensed physician” following “may be given such treatment” in the next-to-last sentence of (4); rewrote (5); and made minor stylistic changes.

The second 2010 amendment (ch. 476), in (4), substituted “respondent has mental illness” for “respondent is mentally ill,” and deleted “by a licensed physician” following “may be given such treatment”; rewrote (5); and made a minor stylistic change.

The third 2010 amendment (ch. 548), in (1), added the second sentence in the first paragraph, and added the last paragraph; in (2) and (4), inserted “State” near the end; and rewrote (4) and (5).

§ 41-21-69. Examination by physicians or physician and psychologist, nurse practitioner or physician assistant; presence of attorney.

(1)(a) The physicians or physician and psychologist, nurse practitioner or physician assistant so appointed shall immediately make a full inquiry into the condition of the person alleged to be in need of treatment and shall make a mental examination and physical evaluation of the person, and shall make a report and certificate of their findings of all mental and acute physical problems to the clerk of the court. The report and certificate shall set forth the facts as found by the physicians or physician and psychologist, nurse practitioner or physician assistant and shall state whether or not the

examiner is of the opinion that the proposed patient is suffering a disability defined in Sections 41-21-61 through 41-21-107 and should be committed to a treatment facility. The statement shall include the reasons for that opinion. The examination may be based upon a history provided by the patient and the report and certificate of findings shall include an identification of all mental and physical problems identified by the examination.

(b) If the physicians or the physician and psychologist, nurse practitioner or physician assistant so appointed finds: (i) the respondent has mental illness; (ii) the respondent is capable of surviving safely in the community with available supervision from family, friends or others; (iii) based on the respondent's treatment history and other applicable medical or psychiatric indicia, the respondent is in need of treatment in order to prevent further disability or deterioration that would result in significant deterioration in the ability to carry out activities of daily living; and (iv) his or her current mental status or the nature of his or her illness limits or negates his or her ability to make an informed decision to seek voluntarily or comply with recommended treatment; the physicians or the physician and psychologist, nurse practitioner or physician assistant so appointed shall so show on the examination report and certification and shall recommend outpatient commitment. The examining physicians or the physician and psychologist, nurse practitioner or physician assistant shall also show the name, address and telephone number at the proposed outpatient treatment physician or facility.

(2) The examinations shall be conducted and concluded within forty-eight (48) hours after the order for examination and appointment of attorney, and the certificates of the physicians or the physician and psychologist, nurse practitioner or physician assistant shall be filed with the clerk of the court within that time, unless the running of that period extends into nonbusiness hours, in which event the certificate shall be filed at the beginning of the next business day. However, if the examining physicians or the physician and psychologist, nurse practitioner or physician assistant is of the opinion that additional time to complete the examination is necessary, and this fact is communicated to the chancery clerk or chancellor, the clerk or chancellor shall have authority to extend the time for completion of the examination and the filing of the certificate, the extension to be not more than eight (8) hours.

(3) At the beginning of the examination, the respondent shall be told in plain language of the purpose of the examination, the possible consequences of the examination, of his or her right to refuse to answer any questions, and his or her right to have his or her attorney present.

SOURCES: Laws, 1975, ch. 492, § 3(4, 5); Laws, 1984, ch. 477, § 5; Laws, 1985, ch. 454, § 3; Laws, 1994, ch. 533, § 4; Laws, 1994, ch. 599, § 4; Laws, 2008, ch. 513, § 2; Laws, 2010, ch. 476, § 60, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “respondent has mental illness” for “respondent is mentally ill” in (1)(b)(i).

§ 41-21-71. Procedure after examination; release or confinement pending hearing.

If, as a result of the examination, the examiners certify that the person is not in need of treatment, the chancellor or clerk shall dismiss the affidavit without the need for a further hearing. If the chancellor or chancery clerk finds, based upon the physicians' or the physician's and a psychologist's, nurse practitioner's or physician assistant's certificate and any other relevant evidence, that the respondent is in need of treatment and that certificate is filed with the chancery clerk within forty-eight (48) hours after the order for examination, or extension of that time as provided in Section 41-21-69, the clerk shall immediately set the matter for a hearing. The hearing shall be set within seven (7) days of the filing of the certificate unless an extension is requested by the respondent's attorney. In no event shall the hearing be more than ten (10) days after the filing of the certificate.

SOURCES: Laws, 1975, ch. 492, § 3(6, 7); Laws, 1976, ch. 401, § 4; Laws, 1984, ch. 477, § 6; Laws, 2008, ch. 513, § 3; Laws, 2010, ch. 398, § 5, eff from and after July 1, 2010.

Joint Legislative Committee Note — In 2009, a typographical error in the second sentence of this section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting "...based upon the physicians' and physician's and a psychologist's, nurse practitioner's or physician assistant's certificate..." for "...based upon the physicians' and physician and a psychologist's, nurse practitioner's or physician assistant's certificate..." The Joint Committee ratified this correction at its July 22, 2010, meeting.

Amendment Notes — The 2010 amendment, added "without the need for a further hearing" in the first sentence.

§ 41-21-73. Procedures for hearing; evidence; witnesses; commitment; disposition and findings.

(1) The hearing shall be conducted before the chancellor. However, the hearing may be held at the location where the respondent is being held. Within a reasonable period of time before the hearing, notice of same shall be provided the respondent and his attorney, which shall include: (a) notice of the date, time and place of the hearing; (b) a clear statement of the purpose of the hearing; (c) the possible consequences or outcome of the hearing; (d) the facts that have been alleged in support of the need for commitment; (e) the names, addresses and telephone numbers of the examiner(s); and (f) other witnesses expected to testify.

(2) The respondent must be present at the hearing unless the chancellor determines that the respondent is unable to attend and makes that determination and the reasons therefor part of the record. At the time of the hearing the respondent shall not be so under the influence or suffering from the effects of drugs, medication or other treatment so as to be hampered in participating in the proceedings. The court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment that the respondent has

received pending the hearing, unless the court determines that such a record would be impractical and documents the reasons for that determination.

(3) The respondent shall have the right to offer evidence, to be confronted with the witnesses against him and to cross-examine them and shall have the privilege against self-incrimination. The rules of evidence applicable in other judicial proceedings in this state shall be followed.

(4) If the court finds by clear and convincing evidence that the proposed patient is a person with mental illness or a person with an intellectual disability and, if after careful consideration of reasonable alternative dispositions, including, but not limited to, dismissal of the proceedings, the court finds that there is no suitable alternative to judicial commitment, the court shall commit the patient for treatment in the least restrictive treatment facility that can meet the patient's treatment needs. Treatment before admission to a state-operated facility shall be located as closely as possible to the patient's county of residence and the county of residence shall be responsible for that cost. Admissions to state-operated facilities shall be in compliance with the catchment areas established by the State Department of Mental Health. A nonresident of the state may be committed for treatment or confinement in the county where the person was found.

Alternatives to commitment to inpatient care may include, but shall not be limited to: voluntary or court-ordered outpatient commitment for treatment with specific reference to a treatment regimen, day treatment in a hospital, night treatment in a hospital, placement in the custody of a friend or relative or the provision of home health services.

For persons committed as having mental illness or having an intellectual disability, the initial commitment shall not exceed three (3) months.

(5) No person shall be committed to a treatment facility whose primary problems are the physical disabilities associated with old age or birth defects of infancy.

(6) The court shall state the findings of fact and conclusions of law that constitute the basis for the order of commitment. The findings shall include a listing of less restrictive alternatives considered by the court and the reasons that each was found not suitable.

(7) A stenographic transcription shall be recorded by a stenographer or electronic recording device and retained by the court.

(8) Notwithstanding any other provision of law to the contrary, neither the State Board of Mental Health or its members, nor the State Department of Mental Health or its related facilities, nor any employee of the State Department of Mental Health or its related facilities, unless related to the respondent by blood or marriage, shall be assigned or adjudicated custody, guardianship, or conservatorship of the respondent.

(9) The county where a person in need of treatment is found is authorized to charge the county of the person's residence for the costs incurred while the person is confined in the county where such person was found.

SOURCES: Laws, 1975, ch. 492, § 4(1); Laws, 1976, ch. 401, § 5; Laws, 1984, ch. 477, § 7; Laws, 1985, ch. 454, § 7; Laws, 1990, ch. 365, § 1; Laws, 1994, ch. 533, § 5; Laws, 1994, ch. 599, § 5; Laws, 2001, ch. 331, § 1; Laws, 2004, ch. 565, § 2; Laws, 2010, ch. 476, § 61; Laws, 2010, ch. 548, § 3, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 3 of ch. 548, Laws of 2010, effective July 1, 2010 (approved April 28, 2010), amended this section. Section 61 of ch. 476, Laws of 2010, effective upon passage (approved April 1, 2010) also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Amendment Notes — The first 2010 amendment (ch. 476), in (4), substituted “patient is a person with mental illness or a person with an intellectual disability” for “patient is a mentally ill or mentally retarded person” in the first sentence of the first paragraph, and “committed as having mental illness or having an intellectual disability” for “committed as mentally ill or mentally retarded” in the last paragraph.

The second 2010 amendment (ch. 548) added the second sentence of (1); in (4), substituted “Treatment before admission” for “Treatment prior to admission” in the second sentence, and inserted “State” in the next-to-last sentence; inserted “State” everywhere it appears in (8); and made minor stylistic changes.

§ 41-21-77. Commitment to state hospital or Veterans Administration facility.

If admission is ordered at a treatment facility, the sheriff, his or her deputy or any other person appointed or authorized by the court shall immediately deliver the respondent to the director of the appropriate facility. Neither the Board of Mental Health or its members, nor the Department of Mental Health or its related facilities, nor any employee of the Department of Mental Health or its related facilities, shall be appointed, authorized or ordered to deliver the respondent for treatment, and no person shall be so delivered or admitted until the director of the admitting institution determines that facilities and services are available. Persons who have been ordered committed and are awaiting admission may be given any such treatment in the facility by a licensed physician as is indicated by standard medical practice. Any county facility used for providing housing, maintenance and medical treatment for involuntarily committed persons pending their transportation and admission to a state treatment facility shall be certified by the State Department of Mental Health under the provisions of Section 41-4-7(kk). No person shall be delivered or admitted to any non-Department of Mental Health treatment facility unless the treatment facility is licensed and/or certified to provide the appropriate level of psychiatric care for persons with mental illness. It is the intent of this Legislature that county-owned hospitals work with regional community mental health/intellectual disability centers in providing care to local patients. The clerk shall provide the director of the admitting institution with a certified copy of the court order, a certified copy of the physicians’ or the physician’s and

psychologist's, nurse practitioner's or physician assistant's certificate, a certified copy of the affidavit, and any other information available concerning the physical and mental condition of the respondent. Upon notification from the United States Veterans Administration or other agency of the United States government, that facilities are available and the respondent is eligible for care and treatment in those facilities, the court may enter an order for delivery of the respondent to or retention by the Veterans Administration or other agency of the United States government, and, in those cases the chief officer to whom the respondent is so delivered or by whom he is retained shall, with respect to the respondent, be vested with the same powers as the director of the Mississippi State Hospital at Whitfield, or the East Mississippi State Hospital at Meridian, with respect to retention and discharge of the respondent.

SOURCES: Laws, 1975, ch. 492, § 4(7); Laws, 1984, ch. 477, § 9; Laws, 1994, ch. 533, § 7; Laws, 1994, ch. 599, § 7; Laws, 2001, ch. 331, § 2; Laws, 2004, ch. 547, § 1; Laws, 2008, ch. 513, § 4; Laws, 2009, ch. 543, § 2; Laws, 2010, ch. 476, § 62; Laws, 2012, ch. 509, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2010 amendment substituted “persons with mental illness” for “the mentally ill” at the end of the fifth sentence; substituted “mental health/intellectual disabilities” for “mental health/mental retardation” in the sixth sentence; and made a minor stylistic change.

The 2012 amendment substituted “(kk)” for “(gg)” following “Section 41-4-7” in the fourth sentence.

§ 41-21-79. Payment of costs.

The costs incidental to the court proceedings including, but not limited to, court costs, prehearing hospitalization costs, cost of transportation, reasonable physician's, psychologist's, nurse practitioner's or physician assistant's fees set by the court, and reasonable attorney's fees set by the court, shall be paid out of the funds of the county of residence of the respondent in those instances where the patient is indigent unless funds for those purposes are made available by the state. However, if the respondent is not indigent, those costs shall be taxed against the respondent or his or her estate. The total amount that may be charged for all of the costs incidental to the court proceedings shall not exceed Four Hundred Dollars (\$400.00).

SOURCES: Laws, 1975, ch. 492, § 4(8); Laws, 1994, ch. 533, § 8; Laws, 1994, ch. 599, § 8; Laws, 2008, ch. 513, § 5; Laws, 2010, ch. 398, § 6, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in the first sentence, inserted “nurse practitioner's or physician assistant's fees,” and made stylistic changes; deleted the former last sentence, which read: “If the respondent is found by the court to not be in need of mental treatment, then all those costs shall be taxed to the affiant initiating the hearing”; and added the last sentence.

§ 41-21-82. Report prior to termination of initial commitment or discharge.

Prior to the termination of the initial commitment order, the director of the facility shall cause an impartial evaluation of the patient to be made in order to assess the extent to which the grounds for initial commitment persist, the patient continues to have mental illness, and alternatives to involuntary commitment are available. If the results of this impartial evaluation do not support the need for continued commitment, the patient shall be discharged.

The director shall file a written report with the committing court setting forth in detail the results of this evaluation and other facts indicating that the patient satisfies the statutory requirement for continued commitment and the findings of the examiner to support this conclusion. If, after reviewing the director's report, the court finds that the patient continues to have mental illness and that there is no alternative to involuntary commitment, the commitment may be continued.

Nothing in this section shall preclude the patient, his counsel or another person acting in his behalf from requesting a hearing under Section 41-21-81 or 41-21-99.

SOURCES: Laws, 1984, ch. 477, § 11; Laws, 1985, ch. 454, § 4; Laws, 2010, ch. 476, § 63, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “have mental illness” for “have mental retardation” both times it appears.

§ 41-21-83. Hearing on need for further treatment.

If a hearing is requested as provided in Section 41-21-74, 41-21-81 or 41-21-99, the court shall not make a determination of the need for continued commitment unless a hearing is held and the court finds by clear and convincing evidence that (a) the person continues to have mental illness or have an intellectual disability; and (b) involuntary commitment is necessary for the protection of the patient or others; and (c) there is no alternative to involuntary commitment. Hearings held under this section shall be held in the chancery court of the county where the facility is located; however, if the patient is confined at the Mississippi State Hospital at Whitfield, Mississippi, the hearing shall be conducted by the Chancery Court of the First Judicial District of Hinds County, Mississippi.

The hearing shall be held within fourteen (14) days after receipt by the court of the request for a hearing. The court may continue the hearing for good cause shown. The clerk shall ascertain whether the patient is represented by counsel, and, if the patient is not represented, shall notify the chancellor who shall appoint counsel for him if the chancellor determines that the patient for any reason does not have the services of an attorney; however, the patient may waive the appointment of counsel subject to the approval of the court. Notice of the time and place of the hearing shall be served at least seventy-two (72) hours before the time of the hearing upon the patient, his attorney, the

director, and the person requesting the hearing, if other than the patient, and any witnesses requested by the patient or his attorney, or any witnesses the court may deem necessary or desirable.

The patient must be present at the hearing unless the chancellor determines that the patient is unable to attend and makes that determination and the reasons therefor part of the record.

The court shall put its findings and the reasons supporting its findings in writing and shall have copies delivered to the patient, his attorney, and the director of the treatment facility. An appeal from the final commitment order by either party may be had on the terms prescribed for appeals in civil cases; however, such appeal shall be without supersedeas. The record on appeal shall include the transcript of the commitment hearing.

SOURCES: Laws, 1975, ch. 492, § 5(2-5); Laws, 1984, ch. 477, § 12; Laws, 1985, ch. 454, § 5; Laws, 1994, ch. 533, § 9; Laws, 1994, ch. 599, § 9; Laws, 2001, ch. 331, § 4; Laws, 2010, ch. 476, § 64, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “continues to have mental illness or have an intellectual disability” for “continues to be mentally ill or retarded” in (a) in the first paragraph; substituted “however, the patient may waive” for “provided, the patient may waive” in the third sentence of the second paragraph; and made minor stylistic changes.

§ 41-21-87. Discharge at behest of director of treatment facility.

(1) The director of either the treatment facility where the patient is committed or the treatment facility where the patient resides while awaiting admission to any other treatment facility may discharge any civilly committed patient upon filing his certificate of discharge with the clerk of the committing court, certifying that the patient, in his judgment, no longer poses a substantial threat of physical harm to himself or others.

(2) A director of a treatment facility specified in subsection (1) above may return any patient to the custody of the committing court upon providing seven (7) days’ notice and upon filing his certificate of same as follows:

(a) When, in the judgment of the director, the patient may be treated in a less restrictive environment; however, treatment in such less restrictive environment shall be implemented within seven (7) days after notification of the court; or

(b) When, in the judgment of the director, adequate facilities or treatment are not available at the treatment facility.

(3) Except as provided in Section 41-21-88, no committing court shall enjoin or restrain any director of a treatment facility specified in subsection (1) above from discharging a patient under this section whose treating professionals have determined that the patient meets one (1) of the criteria for discharge as outlined in subsection (1) or (2) of this section. The director of the treatment facility where the patient is committed may transfer any civilly committed

patient from one (1) facility operated directly by the Department of Mental Health to another as necessary for the welfare of that or other patients. Upon receiving the director's certificate of transfer, the court shall enter an order accordingly.

(4) Within twenty-four (24) hours prior to the release or discharge of any civilly committed patient, other than a temporary pass due to sickness or death in the patient's family, the director shall give or cause to be given notice of such release or discharge to one (1) member of the patient's immediate family, provided the member of the patient's immediate family has signed the consent to release form provided under subsection (5) and has furnished in writing a current address and telephone number, if applicable, to the director for such purpose. The notice of release shall also be provided to any victim of such person and/or to any person to whom a restraining order has been entered to protect from such person. The notice to the family member shall include the psychiatric diagnosis of any chronic mental disorder incurred by the civilly committed patient and any medications provided or prescribed to the patient for such conditions.

(5) All providers of service in a treatment facility, whether in a community mental health/intellectual disability center, region or state psychiatric hospital, are authorized and directed to request a consent to release information from all patients which will allow that entity to involve the family in the patient's treatment. Such release form shall be developed by the Department of Mental Health and provided to all treatment facilities, community mental health/intellectual disability centers and state facilities. All such facilities shall request such a release of information upon the date of admission of the patient to the facility or at least by the time the patient is discharged.

(6) Each month the Department of Mental Health-operated facilities shall provide the directors of community mental health centers the names of all individuals who were discharged to their catchment area with referral for community-based services. The department shall require community mental health care providers to report monthly the date that service(s) were initiated and type of service(s) initiated.

SOURCES: Laws, 1975, ch. 492, § 6(1); Laws, 1984, ch. 477, § 14; Laws, 1997, ch. 587, § 4; Laws, 2001, ch. 331, § 5; Laws, 2004, ch. 547, § 2; Laws, 2010, ch. 440, § 3; Laws, 2010, ch. 476, § 65; Laws, 2011, ch. 501, § 6, eff from and after July 1, 2011.

Joint Legislative Committee Note — Section 65 of ch. 476, Laws of 2010, effective upon passage (approved April 1, 2010), amended this section. Section 3 of ch. 440, Laws of 2010, effective upon passage (approved March 29, 2010), also amended this section. As set out above, this section reflects the language of Section 65 of ch. 476, Laws of 2010, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 2011, ch. 501, § 1, effective July 1, 2011, provides:

“SECTION 1. This act shall be known and may be cited as the ‘Rose Isabel Williams Mental Health Reform Act of 2011.’”

Amendment Notes — The first 2010 amendment (ch. 440) added the exception in (3); and added the second sentence in (4).

The second 2010 amendment (ch. 476) added the exception in (3); added the second sentence in (4); substituted “mental health/intellectual disability centers” for “mental health/retardation centers” both times it appears in (5); and made minor stylistic changes.

The 2011 amendment added (6).

§ 41-21-88. Release of individual acquitted on the ground of insanity and ordered confined to psychiatric hospital or institution; notice of release to be given to certain individuals.

A person committed pursuant to Section 99-13-7 shall not be released for any reason without order of the court having confined the person. Prior to release, the sheriff of the county where the offense was committed, the sheriff of the county of the committed person’s destination and the crime victim or an immediate family member shall be notified of the release.

SOURCES: Laws, 2010, ch. 440, § 2, eff from and after passage (approved Mar. 29, 2010.)

§ 41-21-103. Voluntary admissions for treatment.

(1) Unless he or she has a legal guardian or conservator, a married person or a person eighteen (18) years of age or older may be admitted to a treatment facility as a voluntary admittee for treatment, provided that the director deems the person suitable for admission, upon the filing of an application with the director, accompanied by certificates of two (2) physicians or by one (1) physician and one (1) psychologist, one (1) nurse practitioner or one (1) physician assistant who certify that they examined the person within the last five (5) days and that the person is in need of observation, diagnosis and treatment. The director may accept applications from the person seeking admission or any interested person with the applicant’s written consent.

(2) A person with an intellectual disability who is under the age of eighteen (18) years and who is not married may be admitted to a treatment facility upon application of his or her parent or legal guardian if the following has occurred:

(a) An investigation by the director that carefully probes the person’s social, psychological and developmental background; and

(b) A determination by the director that the person will benefit from care and treatment of his or her disorder at the facility and that services and facilities are available. The reasons for the determination shall be recorded in writing.

(3) A person with an intellectual disability or with mental illness who is married or eighteen (18) years of age or older and who has a legal guardian or conservator may be admitted to a treatment facility upon application of his or her legal guardian or conservator if authorization to make the application has

been received from the court having jurisdiction of the guardianship or conservatorship and the following has occurred:

(a) An investigation by the director that carefully probes the person's social, psychological and developmental background; and

(b) A determination by the director that the person will benefit from care and treatment of his or her disorder at the facility and that services and facilities are available. The reasons for the determination shall be recorded in writing.

(4) A person with mental illness who is under the age of fourteen (14) years may be admitted to a treatment facility upon the application of his or her parent or legal guardian if the following has occurred:

(a) An investigation by the director that carefully probes the person's social, psychological and developmental background; and

(b) A determination by the director that the person will benefit from care and treatment of his or her disorder at the facility and that services and facilities are available. The reasons for the determination shall be recorded in writing.

(5) A person with mental illness who is fourteen (14) years of age or older but less than eighteen (18) years of age may be admitted to a treatment facility in the same manner as an adult may be involuntarily committed.

(6) Any voluntary admittee may leave a treatment facility after five (5) days, excluding Saturdays, Sundays and holidays, after he or she gives any member of the treatment facility staff written notice of his or her desire to leave, unless before leaving, the patient withdraws the notice by written withdrawal or unless within those five (5) days a petition and the certificates of two (2) examining physicians, or one (1) examining physician and one (1) psychologist, nurse practitioner or physician assistant, stating that the patient is in need of treatment, are filed with the chancery clerk in the county of the patient's residence or the county in which the treatment facility is located; however, if the admittee is at Mississippi State Hospital at Whitfield, the petition and certificate shall be filed with the chancery clerk in the county of patient's residence or with the Chancery Clerk for the First Judicial District of Hinds County, and the chancellor or clerk shall order a hearing under Sections 41-21-61 through 41-21-107. The patient may continue to be hospitalized pending a final order of the court in the court proceedings.

(7) The written application form for voluntary admission shall contain in large, bold-face type a statement in simple, nontechnical terms that the admittee may not leave for five (5) days, excluding Saturdays, Sundays and holidays, after giving written notice of his or her desire to leave. This right to leave must also be communicated orally to the admittee at the time of his or her admission, and a copy of the application form given to the admittee and to any parent, guardian, relative, attorney or friend who accompanied the patient to the treatment facility.

SOURCES: Laws, 1975, ch. 492, § 8; Laws, 1978, ch. 399, § 1; Laws, 1984, ch. 477, § 23; Laws, 2008, ch. 513, § 6; Laws, 2010, ch. 476, § 66, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “A person with an intellectual disability” for “A mentally retarded person” in (2), “A person with an intellectual disability or with mental illness” for “A mentally retarded or mentally ill person” in (3), and “A person with mental illness” for “A mentally ill person” in (4) and (5)..

§ 41-21-109. Rehabilitation facilities for adolescents with mental illness or with an intellectual disability; establishment.

(1) The purpose of this section is to provide modern and efficient rehabilitation facilities for adolescents with mental illness or with an intellectual disability who have been committed for treatment by a court of competent jurisdiction under Section 41-21-61 et seq.

(2) The Department of Finance and Administration, acting through the Bureau of Building, Grounds and Real Property Management, using funds from bonds, monies appropriated by the Legislature for those purposes, federal matching or other federal funds, federal grants or other available funds from whatever source, shall provide for by construction, lease, lease-purchase or otherwise and equip the following juvenile rehabilitation facilities under the jurisdiction and responsibility of the Mississippi Department of Mental Health: Construction and equipping of two (2) separate facilities each of which could serve up to fifty (50) adolescents, and each of which will be located at sites approved by the Department of Mental Health that would be specifically designed to serve adolescents who meet commitment criteria as defined by Section 41-21-61. One (1) fifty-bed facility shall house adolescent offenders with mental illness, and the other facility shall house adolescent offenders with an intellectual disability. Priority admission to these facilities shall be those adolescents who have some involvement in the judicial system. These facilities shall be self-contained and offer a secure but therapeutic environment allowing persons to be habilitated apart from persons who are more vulnerable and who have disabilities that are more disabling. The number of persons admitted to these facilities shall not exceed the number of beds authorized under this section or the number of beds licensed or authorized by the licensure and certification agency, whichever is less.

Those facilities shall be on property owned by the Department of Mental Health, or its successor, at one or more sites selected by the Department of Mental Health on land that is either donated to the state or purchased by the state specifically for the location of those facilities.

(3) The facility located in Harrison County shall be known as the Specialized Treatment Facility for the Emotionally Disturbed, and the facility located in Brookhaven shall be known as the Mississippi Adolescent Center.

SOURCES: Laws, 1995, ch. 528, § 1; Laws, 2009, ch. 563, § 12; Laws, 2010, ch. 476, § 67, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “with an intellectual disability” for “mental retardation” in (1); and substituted “offenders with an intellectual disability” for “offenders with mental retardation.”

CRISIS INTERVENTION TEAMS

SEC.

- 41-21-131. Definitions.
- 41-21-133. Establishment of Crisis Intervention Teams.
- 41-21-135. Oversight of Crisis Intervention Teams by community mental health centers; collaborative agreements among community health center, law enforcement agency and hospital that will serve as single point of entry.
- 41-21-137. Internal operation of single point of entry; appointment of medical director to oversee operation of hospital-based service.
- 41-21-139. Determination of need to take person into custody to transport to single point of entry; immunity for persons acting in good faith in connection with detention of certain persons.
- 41-21-141. Implementation of comprehensive psychiatric emergency service; licensure for number of extended observation beds required; final disposition required within 72 hours.
- 41-21-143. Active encouragement of hospitals and law enforcement agencies to develop Crisis Intervention Teams and comprehensive psychiatric emergency services.

§ 41-21-131. Definitions.

As used in Sections 41-21-131 through 41-21-143, the following terms shall have the meanings as defined in this section:

(a) “Crisis Intervention Team” means a community partnership among a law enforcement agency, a community mental health center, a hospital, other mental health providers, consumers and family members of consumers.

(b) “Participating partner” means a law enforcement agency, a community mental health center or a hospital that has each entered into collaborative agreements needed to implement a Crisis Intervention Team.

(c) “Catchment area” means a geographical area in which a Crisis Intervention Team operates and is defined by the jurisdictional boundaries of the law enforcement agency that is the participating partner.

(d) “Crisis Intervention Team officer” or “CIT officer” means a law enforcement officer who is authorized to make arrests under Section 99-3-1 and who is trained and certified in crisis intervention and who is working for a law enforcement agency that is a participating partner in a Crisis Intervention Team.

(e) “Substantial likelihood of bodily harm” means that:

(i) The person has threatened or attempted suicide or to inflict serious bodily harm to himself; or

(ii) The person has threatened or attempted homicide or other violent behavior; or

(iii) The person has placed others in reasonable fear of violent behavior and serious physical harm to them; or

(iv) The person is unable to avoid severe impairment or injury from specific risks; and

(v) There is substantial likelihood that serious harm will occur unless the person is placed under emergency treatment.

(f) “Single point of entry” means a specific hospital that is the participating partner in a Crisis Intervention Team and that has agreed to provide psychiatric emergency services and triage and referral services.

(g) “Psychiatric emergency services” means services designed to reduce the acute psychiatric symptoms of a person who is mentally ill or a person who has an impairment caused by drugs or alcohol and, when possible, to stabilize that person so that continuing treatment can be provided in the local community.

(h) “Triage and referral services” means services designed to provide evaluation of a person with mental illness or a person who has an impairment caused by drugs or alcohol in order to direct that person to a mental health facility or other mental health provider that can provide appropriate treatment.

(i) “Comprehensive psychiatric emergency service” means a specialized psychiatric service operated by the single point of entry and located in or near the hospital emergency department that can provide psychiatric emergency services for a period of time greater than can be provided in the hospital emergency department.

(j) “Extended observation bed” means a hospital bed that is used by a comprehensive psychiatric emergency service and is licensed by the State Department of Health for that purpose.

(k) “Psychiatric nurse practitioner” means a registered nurse who has completed the educational requirements specified by the State Board of Nursing, has successfully passed either the adult or family psychiatric nurse practitioner examination and is licensed by the State Board of Nursing to work under the supervision of a physician at a single point of entry following protocols approved by the State Board of Nursing.

(l) “Psychiatric physician assistant” means a physician assistant who has completed the educational requirements and passed the certification examination as specified in Section 73-26-3, is licensed by the State Board of Medical Licensure, has had at least one (1) year of practice as a physician assistant employed by a community mental health center, and is working under the supervision of a physician at a single point of entry.

SOURCES: Laws, 2010, ch. 548, § 4, eff from and after July 1, 2010.

§ 41-21-133. Establishment of Crisis Intervention Teams.

(1) Any law enforcement agency or community mental health center, as a participating partner, is authorized to establish Crisis Intervention Teams to provide for psychiatric emergency services and triage and referral services for persons who are with substantial likelihood of bodily harm as a more humane alternative to confinement in a jail.

(2) A Crisis Intervention Team shall have one or more designated hospitals within the specified catchment area that has agreed to serve as a single point of entry and to provide psychiatric emergency services, triage and referral services and other appropriate medical services for persons in custody of a CIT officer or referred by the community mental health center within the specified catchment area.

(3) Any hospital, as a participating partner and serving as a single point of entry, is authorized to establish a comprehensive psychiatric emergency service to provide psychiatric emergency services to a person with mental illness or an impairment caused by drugs or alcohol for a period of time greater than allowed in a hospital emergency department when, in the opinion of the treating physician, psychiatric nurse practitioner or psychiatric physician assistant, that person likely can be stabilized within seventy-two (72) hours so that continuing treatment can be provided in the local community rather than a crisis intervention center or state psychiatric hospital.

(4) Two (2) or more governmental entities may jointly provide Crisis Intervention Teams and comprehensive psychiatric emergency services authorized under Sections 41-21-131 through 41-21-143. For the purpose of addressing unique rural service delivery needs and conditions, the State Department of Mental Health may authorize two (2) or more community mental health centers to collaborate in the development of Crisis Intervention Teams and comprehensive psychiatric emergency services and will facilitate the development of those programs.

SOURCES: Laws, 2010, ch. 548, § 5, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the code section number assigned to this section by Section 5 of Chapter 548, Laws of 2010, by changing “41-61-133” to “41-21-133.” In addition, an error in a statutory reference in the first sentence of (4) was corrected by substituting “Sections 41-21-131 through 41-21-143” for “Sections 41-61-131 through 41-61-143.” The Joint Committee ratified these corrections at its July 22, 2010, meeting.

§ 41-21-135. Oversight of Crisis Intervention Teams by community mental health centers; collaborative agreements among community health center, law enforcement agency and hospital that will serve as single point of entry.

(1) Community mental health centers shall have oversight of Crisis Intervention Teams operating within their service areas. Proposals for Crisis Intervention Teams shall include the necessary collaborative agreements among the community mental health center, a law enforcement agency and a hospital that will serve as the single point of entry for the Crisis Intervention Team catchment area.

(2) The collaborative agreements shall specify that the hospital acting as the single point of entry shall accept all persons who are in custody of a CIT officer operating within the catchment area, when custody has been taken

because of substantial likelihood of bodily harm, and shall accept all persons with mental illness and persons with impairment caused by drugs or alcohol who are referred by the community mental health center serving the catchment area, when a qualified staff member of the community mental health center has evaluated the person and determined that the person needs acute psychiatric emergency services that are beyond the capability of the community mental health center.

(3) The director of the community mental health center shall determine if all collaborative agreements address the needs of the proposed Crisis Intervention Team, including generally accepted standards of law enforcement training, before authorizing operation of the plan. Those generally accepted standards for law enforcement training shall be verified by the State Department of Mental Health.

(4) If the director of the community mental health center has reason to believe that an authorized Crisis Intervention Team is not operating in accordance with the collaborative agreements and within general acceptable guidelines and standards, the director has the authority to review the operation of the Crisis Intervention Team and, if necessary, suspend operation until corrective measures are taken.

(5) The director of the community mental health center shall establish a process by which complaints from the public regarding the operation of a Crisis Intervention Team may be evaluated and addressed and provide for the inclusion of consumer representatives in that process.

SOURCES: Laws, 2010, ch. 548, § 6, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the code section number assigned to this section by Section 6 of Chapter 548, Laws of 2010, by changing “41-61-135” to “41-21-135.” The Joint Committee ratified the correction at its July 22, 2010, meeting.

§ 41-21-137. Internal operation of single point of entry; appointment of medical director to oversee operation of hospital-based service.

(1) The internal operation of a single point of entry shall be governed by the administration of the hospital and regulated by the State Department of Health, the Joint Commission on Accreditation of Healthcare Organizations and other state and federal agencies that have regulatory authority over hospitals. All collaborative agreements must be in compliance with these governing authorities.

(2) A hospital operating as a single point of entry for a Crisis Intervention Team shall appoint a medical director to oversee the operation of the hospital-based service. The medical director will assure that the services provided are within the guidelines established by the collaborative agreements.

(3) Notwithstanding any other provision of law, nothing in Sections 41-21-131 through 41-21-143 shall be interpreted to create an entitlement for

any individual to receive psychiatric emergency services at a single point of entry.

SOURCES: Laws, 2010, ch. 548, § 7, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the code section number assigned to this section by Section 7 of Chapter 548, Laws of 2010, by changing “41-61-137” to “41-21-137.” In addition, an error in a statutory reference in (3) was corrected by substituting “Sections 41-21-131 through 41-21-143” for “Sections 41-61-131 through 41-61-143.” The Joint Committee ratified these corrections at its July 22, 2010, meeting.

§ 41-21-139. Determination of need to take person into custody to transport to single point of entry; immunity for persons acting in good faith in connection with detention of certain persons.

(1) If a CIT officer determines that a person is with substantial likelihood of bodily harm, that officer may take the person into custody for the purpose of transporting the person to the designated single point of entry serving the catchment area in which the officer works. The CIT officer shall certify in writing the reasons for taking the person into custody.

(2) A CIT officer shall have no further legal responsibility or other obligations once a person taken into custody has been transported and received at the single point of entry.

(3) A CIT officer acting in good faith in connection with the detention of a person believed to be with substantial likelihood of bodily harm shall incur no liability, civil or criminal, for those acts.

(4) Only CIT officers authorized to operate within a catchment area may bring persons in custody to the single point of entry for that catchment area. Law enforcement officers working outside the designated catchment area are not authorized to transport any person into the catchment area for the purpose of bringing that person to the single point of entry.

(5) Any person transported by a CIT officer to the single point of entry or any person referred by the community mental health center following guidelines of the collaborative agreements shall be examined by a physician, psychiatric nurse practitioner or psychiatric physician assistant. If the person does not consent to voluntary evaluation and treatment, and the examiner determines that the person is a mentally ill person, as defined in Section 41-21-61(e), the examiner shall then determine if that person can be held under the provisions of Section 41-21-67(5). All other provisions of Section 41-21-67(5) shall apply and be extended to include licensed psychiatric nurse practitioners and psychiatric physician assistants employed by the single point of entry, including protection from liability, as provided in this section, when acting in good faith. If the examiner determines that the person is with substantial likelihood of bodily harm because of impairment caused by drugs or alcohol and determines that there is no reasonable, less-restrictive alterna-

tive, the person may be held at the single point of entry until the impairment has resolved and the person is no longer with substantial likelihood of bodily harm. Persons acting in good faith in connection with the detention of a person with impairment caused by drugs or alcohol shall incur no liability, civil or criminal, for those acts.

SOURCES: Laws, 2010, ch. 548, § 8, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the code section number assigned to this section by Section 8 of Chapter 548, Laws of 2010, by changing “41-61-139” to “41-21-139.” The Joint Committee ratified the correction at its July 22, 2010, meeting.

§ 41-21-141. Implementation of comprehensive psychiatric emergency service; licensure for number of extended observation beds required; final disposition required within 72 hours.

(1) To implement a comprehensive psychiatric emergency service, a single point of entry must request licensure from the State Department of Health for the number of extended observation beds that are required to adequately serve the designated catchment area. A license for the requested beds must be obtained before beginning operation.

(2) If the State Department of Health determines that a comprehensive psychiatric emergency service can provide for the privacy and safety of all patients receiving services in the hospital, the department may approve the location of one or more of the extended observation beds within another area of the hospital rather than in proximity to the emergency department.

(3) Each comprehensive psychiatric emergency service shall provide or contract to provide qualified physicians, psychiatric nurse practitioners, psychiatric physician assistants and ancillary personnel necessary to provide services twenty-four (24) hours per day, seven (7) days per week.

(4) A comprehensive psychiatric emergency service shall have at least one (1) physician, psychiatric nurse practitioner or psychiatric physician assistant, who is a member of the staff of the hospital, on duty and available at all times. However, the medical director of the service may waive this requirement if provisions are made for a physician in the emergency department to assume responsibility and provide initial evaluation and treatment of a person in custody of a CIT officer or referred by the community mental health center and provisions are made for the physician, psychiatric nurse practitioner or psychiatric physician assistant on call for the comprehensive psychiatric emergency service to evaluate the person onsite within thirty (30) minutes of notification that the person has arrived.

(5) Any person admitted to a comprehensive psychiatric emergency service must have a final disposition within a maximum of seventy-two (72) hours. If a person cannot be stabilized within seventy-two (72) hours, that person

shall be transferred from an extended observation bed to a more appropriate inpatient unit.

SOURCES: Laws, 2010, ch. 548, § 9, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the code section number assigned to this section by Section 9 of Chapter 548, Laws of 2010, by changing “41-61-141” to “41-21-141.” The Joint Committee ratified the correction at its July 22, 2010, meeting.

§ 41-21-143. Active encouragement of hospitals and law enforcement agencies to develop Crisis Intervention Teams and comprehensive psychiatric emergency services.

(1) Community mental health center directors shall actively encourage hospitals to develop comprehensive psychiatric emergency services. If a collaborative agreement can be negotiated with a hospital that can provide a comprehensive psychiatric emergency service, that hospital shall be given priority when designating the single point of entry.

(2) The State Department of Mental Health shall encourage community mental health center directors to actively work with hospitals and law enforcement agencies to develop Crisis Intervention Teams and comprehensive psychiatric emergency services and shall facilitate the development of those programs.

(3) State colleges and universities that provide classes in criminal justice are encouraged to collaborate with law enforcement agencies to develop training guidelines and standards for CIT officers and to provide educational classes and continuing education programs by which CIT officers can earn continuing education credits.

SOURCES: Laws, 2010, ch. 548, § 10, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in the code section number assigned to this section by Section 10 of Chapter 548, Laws of 2010, by changing “41-61-143” to “41-21-143.” The Joint Committee ratified the correction at its July 22, 2010, meeting.

CHAPTER 23

Contagious and Infectious Diseases; Quarantine

In General	41-23-1
School-located Influenza Vaccination Programs	41-23-121

IN GENERAL

SEC.	
41-23-5.	Authority of State Department of Health to investigate diseases; au-

thority to temporarily detain individuals for disease control purposes under certain circumstances.

§ 41-23-5. Authority of State Department of Health to investigate diseases; authority to temporarily detain individuals for disease control purposes under certain circumstances.

The State Department of Health shall have the authority to investigate and control the causes of epidemic, infectious and other disease affecting the public health, including the authority to establish, maintain and enforce isolation and quarantine, and in pursuance thereof, to exercise such physical control over property and individuals as the department may find necessary for the protection of the public health. The State Department of Health is further authorized and empowered to require the temporary detainment of individuals for disease control purposes based upon violation of any order of the State Health Officer. For the purpose of enforcing such orders of the State Health Officer, persons employed by the department as investigators shall have general arrest powers. All law enforcement officers are authorized and directed to assist in the enforcement of such orders of the State Health Officer.

SOURCES: Codes, 1906, § 2500; Hemingway's 1917, § 4849; 1930, § 4886; 1942, § 7042; Laws, 1983, ch. 522, § 4; Laws, 2010, ch. 505, § 12, eff from and after May 1, 2010. See Editor's Note.

Editor's Note — This section was amended by Laws of 2010, ch. 505, § 12, effective from and after July 1, 2010. The effective date of Laws of 2010, ch. 505, was subsequently amended by Laws of 2010, ch. 556, § 1 which provides:

"SECTION 1. Section 18 of House Bill No. 211 (Regular Session) [Chapter 505] is amended to read:

"Section 18. This act shall take effect and be in force from and after May 1, 2010."

Amendment Notes — The 2010 amendment added the last three sentences.

§ 41-23-45. Department of Health to provide educational material on availability of vaccines for meningitis and hepatitis A and B to public universities and colleges for distribution to students.

Editor's Note — Section 37-4-5 provides that the terms "Junior College Commission" and "State Board for Community and Junior Colleges," wherever they appear in the laws of Mississippi, shall mean the "Mississippi Community College Board."

SCHOOL-LOCATED INFLUENZA VACCINATION PROGRAMS

SEC.

41-23-121. Funding for School-Located Influenza Vaccination Programs.

§ 41-23-121. Funding for School-Located Influenza Vaccination Programs.

(1) It is the intent of the Legislature that the State Department of Health apply for federal grants and appropriations under the federal Patient Protection and Affordable Care Act (PPACA), Public Law 111-148, to fund, build infrastructure, promote and expand school-located influenza vaccination programs to provide seasonal influenza vaccinations for school-aged children. The agency may seek grants and appropriations from any source.

(2) The State Department of Health shall make information regarding federal grant and appropriations opportunities under PPACA available to local government agencies, local public health departments, school districts, and state and local nonprofit organizations via the agency’s website.

SOURCES: Laws, 2011, ch. 473, § 2, eff from and after July 1, 2011.

Editor’s Note — Laws of 2011, ch. 473, § 1, provides:
“SECTION 1. The State of Mississippi finds as follows:
“(a) Influenza is a contagious respiratory illness caused by influenza viruses. The best way to help prevent seasonal influenza is by getting a vaccination each year.
“(b) Every year in the United States, on average, more than two hundred thousand (200,000) people are hospitalized from influenza-related complications and about thirty-six thousand (36,000) people, mostly the elderly, die from influenza-related causes.
“(c) The United States Centers for Disease Control and Prevention (CDC) Advisory Committee on Immunization Practices recommends seasonal influenza vaccinations for all eligible persons in the United States, including eligible children aged six (6) months through eighteen (18) years of age.
“(d) Children and young adults five (5) years to nineteen (19) years of age are three (3) to four (4) times more likely to be infected with influenza than adults.
“(e) School-aged children are the population group most responsible for transmission of contagious respiratory viruses, including influenza.
“(f) The elderly are the next most vulnerable population to severe illness from influenza due to weaker immune response to vaccination.
“(g) School-located influenza vaccination programs may be an effective way to vaccinate children while reducing transmission and infection rates to the larger community and at the same time reducing rates of school absenteeism due to children being infected with influenza.
“(h) Schools can be an effective infrastructure tool to improve pandemic planning by identifying known and effective pandemic vaccination centers.
“(i) Although experience has demonstrated the feasibility and success of school-located influenza vaccination programs in vaccinating children, funding and logistical issues, particularly involving the delivery of vaccine to children with private insurance coverage, are issues with program sustainability.
“(j) Given the significant fiscal challenges ahead for Mississippi, it is important for the Legislature to ensure that state agencies maximize their opportunity to obtain additional federal funds.”

CHAPTER 26
Mississippi Safe Drinking Water Act of 1997

IN GENERAL

SEC.	
41-26-8.	Requirements for construction and operation of public water systems; role of director.
41-26-13.	Notices of noncompliance, failure to perform monitoring, variances, and exemptions.

§ 41-26-8. Requirements for construction and operation of public water systems; role of director.

(1) The director shall exercise general supervision over the construction and operation of public water systems throughout the state. The general supervision shall include all of the features of construction and operation of public water systems which do or may affect the sanitary quality or the quantity of the water supply.

(2)(a) No person shall construct or change any community public water system or nontransient, noncommunity public water system until the plans for that construction or change have been submitted to and approved by the director. Plans for the construction or change must be prepared by a professional engineer registered in this state.

(b) In addition, each applicant for a new community public water system or nontransient, noncommunity public water system shall submit an operation and maintenance plan for review and approval by the director. The plan must be approved before beginning construction.

(c) In granting any approval under this section, the director may specify any modifications, conditions or limitations as may be required for the protection of the public health and welfare.

(d) The director may also review the source of the water and the quantity of water to be withdrawn.

(e) Records of construction, including plans and descriptions of existing portions of a public water system, shall be made available to the department upon request.

(f) Each applicant for a new community public water system or non-transient, noncommunity public water system shall submit financial and managerial information as required by the public utilities staff. Following review of that information, the executive director of the public utilities staff shall certify in writing to the director the financial and managerial viability of the system if the executive director determines the system is viable. The director shall not approve the construction until that certification is received.

(g) The director shall not approve any plans for changes to an existing community public water system or nontransient, noncommunity public water system, if the director determines the changes would threaten the viability of the system or if the changes may overload the operational capabilities of the system.

(h) Those public water systems determined by the director to be appropriately providing corrosion control treatment shall effectively operate

and maintain the system's water treatment facilities in order to continuously provide the optimum pH of the treated water or optimum dosage of corrosion inhibitor.

(3) Each semipublic water system shall notify the department of its location, a responsible party and the number of connections served. The department shall, to the extent practicable, take appropriate actions to ensure that records on semipublic water systems are up-to-date. The board may require water well drillers to provide information on wells drilled for use by semipublic water systems. The department shall at least annually collect a sample from each semipublic water system and shall analyze that sample at no cost to the semipublic water system for microbiological contaminants and any other contaminants deemed appropriate by the department. If the department finds levels of contaminants exceeding the Mississippi Primary Drinking Water Standards, the department shall notify the responsible party and shall provide technical assistance to the system to correct the problem. No semipublic water system shall be subject to the penalty provided under Section 41-26-31.

SOURCES: Laws, 1997, ch. 389, § 3; Laws, 2002, ch. 472, § 1; Laws, 2005, ch. 366, § 1; Laws, 2007, ch. 401, § 1; Laws, 2010, ch. 308, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment deleted the last sentence in (2)(h), which read: "This paragraph shall repeal on July 1, 2010."

§ 41-26-13. Notices of noncompliance, failure to perform monitoring, variances, and exemptions.

(1) A public water system shall, as soon as practicable, notify the county or district health department, the board and the administrator if one (1) of the following conditions exist: (a) the system is not in compliance with the Mississippi Primary Drinking Water Regulations; (b) the system fails to perform monitoring required by regulations adopted by the board; (c) the system is subject to a variance granted for an inability to meet a maximum contaminant level requirement; (d) the system is subject to an exemption; or (e) the system fails to comply with the requirements prescribed by a variance or exemption.

(2) In addition, the system shall provide public notice. The notice shall be provided to the Mississippi State Department of Health at least once every three (3) months, and that public notice shall be published by the department on its Web site. The system shall provide notice that the drinking water quality reports are available on the Mississippi State Department of Health Web site by placing the notice, including the Web site address, in a newspaper of general circulation in the area which is served by the water system, as determined by the director. The notice shall not be placed in the legal section of the newspaper. The notice shall be furnished to the other communications media serving the area as soon as practicable after the discovery of any condition for which the notice is required. If the water bills of a public water system are

issued more often than once every three (3) months, the notice shall be included in at least one (1) water bill of the system every three (3) months, and if a public water system issues its water bills less often than once every three (3) months, the notice shall be included in each water bill issued by the system.

SOURCES: Laws, 1976, ch. 452, § 7; Laws, 1997, ch. 389, § 13; Laws, 2010, ch. 334, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted the second and third sentences in (2), for the former second sentence, which read: “The notice shall be published at least once every three (3) months in a newspaper of general circulation in the area which is served by the water system, as determined by the director.”

CHAPTER 29

Poisons, Drugs and Other Controlled Substances

Article 3.	Uniform Controlled Substances Law	41-29-101
Article 5.	Other Narcotic Drug Regulations	41-29-301

ARTICLE 3.

UNIFORM CONTROLLED SUBSTANCES LAW.

SEC.	
41-29-113.	Schedule I of controlled substances.
41-29-115.	Schedule II of controlled substances.
41-29-117.	Schedule III of controlled substances.
41-29-119.	Schedule IV of controlled substances.
41-29-121.	Schedule V of controlled substances.
41-29-125.	Rules and regulations relative to registration and control of manufacture, distribution and dispensing of controlled substances; delivery of Schedule II controlled substance by mail or other shipment to be made only to persons eighteen or older.
41-29-129.	Revocation and suspension of registration.
41-29-137.	Prescriptions.
41-29-139.	Prohibited acts; penalties.
41-29-144.	Acquiring or obtaining possession of controlled substance, legend drug or prescription by misrepresentation, fraud and the like; penalty.
41-29-146.	False representation of prescription or legend drug; penalty.
41-29-150.	Participation in drug rehabilitation programs; probation; expunction of record upon application to court.
41-29-176.	Forfeiture of property other than controlled substance, raw material or paraphernalia.
41-29-181.	Procedure for disposition of seized property; order directing disposition by bureau of narcotics.
41-29-185.	Disposition of forfeited property transferred pursuant to federal property sharing provisions.
41-29-189.	Drug Evidence Disposition Fund created; purpose; sources of funds.
41-29-191.	Collection of unused prescription pills and drugs brought to drug task force main office from residential sources.

§ 41-29-105. Definitions.

RESEARCH REFERENCES

ALR. Construction and Application of State Drug Paraphernalia Acts. 23 A.L.R. 6th 307.

§ 41-29-113. Schedule I of controlled substances.

The controlled substances listed in this section are included in Schedule I.

SCHEDULE I

(a) **Opiates.** Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl;
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol, except levo-alphacetylmethadol (levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl;
- (8) Alpha-methylthiofentanyl;
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl;
- (12) Beta-hydroxy-3-methylfentanyl;
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoperidine;

- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacylmorphan;
- (34) 3-methylfentanyl;
- (35) 3-methylthiofentanyl;
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl;
- (43) PEPAP (1-(-2-phenylethyl)-4-phenyl-4-acetoxypiperidine);
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritramide;
- (49) Proheptazine;
- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl;
- (54) Tilidine;
- (55) Trimeperidine.

(b) **Opiate derivatives.** Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine; (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphinol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Monoacetylmorphine;

- (16) Morphine methylbromide;
- (17) Morphine methylsulfonate;
- (18) Morphine-N-Oxide;
- (19) Myrophine;
- (20) Nicocodeine;
- (21) Nicomorphine;
- (22) Normorphine;
- (23) Pholcodine;
- (24) Thebacon.

(c) **Hallucinogenic substances.** Any material, compound, mixture or preparation which contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric) and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 2,5-dimethoxy-4-ethylamphetamine (DOET);
- (4) 2,5-dimethoxy-4(n) propylthiophenethylamine (2C-T-7);
- (5) 3,4-methylenedioxymethamphetamine (MDMA);
- (6) 3,4,5-trimethoxy amphetamine;
- (7) Alpha-methyltryptamine (Also known as AMT);
- (8) Bufotenine;
- (9) Diethyltryptamine;
- (10) Dimethyltryptamine;
- (11) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);
- (12) 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);
- (13) Alpha-ethyltryptamine;
- (14) 4-methyl-2,5-dimethoxyamphetamine;
- (15) Hashish;
- (16) Ibogaine;
- (17) Lysergic acid diethylamide (LSD);
- (18) Marihuana;
- (19) Mescaline;
- (20) Peyote;
- (21) N-ethyl-3-piperidyl benzilate;
- (22) N-methyl-3-piperidyl benzilate;
- (23) Phencyclidine;
- (24) Psilocybin;
- (25) Psilocyn;
- (26) Tetrahydrocannabinols, meaning tetrahydrocannabinols contained in a plant of the genus Cannabis (cannabis plant), as well as the synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant such as the following:

- (A) -1 cis or trans tetrahydrocannabinol;
- (B) -6 cis or trans tetrahydrocannabinol;
- (C) -3,4 cis or trans tetrahydrocannabinol.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of atomic positions are covered.) ("Tetrahydrocannabinols" excludes dronabinol and nabilone.)

However, the following products are exempted from control: THC-containing industrial products (e.g., (i) paper, rope and clothing made from cannabis stalks); (ii) processed cannabis plant materials used for industrial purposes, such as fiber retted from cannabis stalks for use in manufacturing textiles or rope; (iii) animal feed mixtures that contain sterilized cannabis seeds and other ingredients (not derived from the cannabis plant) in a formula designed, marketed and distributed for nonhuman consumption; and (iv) personal care products that contain oil from sterilized cannabis seeds, such as shampoos, soaps, and body lotions (provided that such products do not cause THC to enter the human body);

- (27) 2,5-dimethoxyamphetamine;
- (28) 4-bromo-2,5-dimethoxyamphetamine;
- (29) 4-bromo-2,5-dimethoxyphenylethylamine;
- (30) 4-methoxyamphetamine;
- (31) Ethylamine analog of phencyclidine (PCE);
- (32) Pyrrolidine analog of phencyclidine (PHP, PCPy);
- (33) Thiophene analog of phencyclidine;
- (34) Parahexyl;

(35) 1-[1-(2-thienyl)cyclohexyl] pyrrolidine (TCPy);

(36) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenylethylamine, N-ethyl MDA, MDE, MDEA);

(37) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy MDA, N-OHMDA, and N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenylethylamine);

(38) *Salvia divinorum*;

(39) Synthetic cannabinoids:

(A) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol (also known as HU-210 or 1,1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol);

(B) Naphthoylindoles and naphthylmethylindoles, being any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane, whether or not substituted in the indole ring to any extent, or in the naphthyl ring to any extent;

(C) Naphthoylpyrroles, being any compound structurally derived from 3-(1-naphthoyl)pyrrole, whether or not substituted in the pyrrole ring to any extent, or in the naphthyl ring to any extent;

(D) Naphthylmethylindenes, being any compound structurally derived from 1-(1-naphthylmethyl)indene, whether or not substituted in the indene ring to any extent or in the naphthyl ring to any extent;

(E) Phenylacetylindoles, being any compound structurally derived from 3-phenylacetylindole, whether or not substituted in the indole ring to any extent or in the phenyl ring to any extent;

(F) Cyclohexylphenols, being any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol, whether or not substituted in the cyclohexyl ring to any extent or in the phenolic ring to any extent;

(G) Benzoylindoles, whether or not substituted in the indole ring to any extent or in the phenyl ring to any extent;

(H) Adamantoylindoles, whether or not substituted in the indole ring to any extent or in the adamantoyl ring system to any extent;

(I) Tetrahydro derivatives of cannabiniol and 3-alkyl homologues of cannabiniol or of its tetrahydro derivatives, except where contained in cannabis or cannabis resin.

(d) **Depressants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (other names include: GHB, gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone;

(3) Methaqualone.

(e) **Stimulants.** Any material, compound, mixture or preparation which contains any quantity of the following central nervous system stimulants including optical salts, isomers and salts of isomers unless specifically excepted or unless listed in another schedule:

(1) Aminorex;

(2) N-benzylpiperazine (also known as BZP; 1-benzylpiperazine);

(3) Fenethylline;

(4) N-ethyl-amphetamine;

(5) 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline);

(6) Any material, compound, mixture or preparation which contains any quantity of N,N-dimethylamphetamine. (Other names include: N,N,-alpha-trimethyl-benzeneethanamine, and N,N-alphatrimethylphenethylamine);

(7) Cathinone, methcathinone, 4-methylmethcathinone (mephedrone), methylenedioxypyrovalerone (MDPV), and, unless listed in another schedule, any compound other than bupropion that is structurally derived from 2-Amino-1-phenyl-1-propanone by modification in any of the following ways:

(i) By substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

- (ii) By substitution at the 3-position with an alkyl substituent;
- (iii) By substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure.

SOURCES: Codes, 1942, § 6831-57; Laws, 1971, ch. 521, § 7; Laws, 1974, ch. 415, § 2; Laws, 1975, ch. 465, § 1; Laws, 1977, ch. 391, § 1; Laws, 1978, ch. 404, § 1; Laws, 1979, ch. 368, § 1; Laws, 1981, ch. 502, § 2; Laws, 1982, ch. 402, § 1; Laws, 1983, ch. 404, § 1; Laws, 1985, ch. 308, § 1; Laws, 1986, ch. 512, § 1; Laws, 1987, ch. 475, § 1; Laws, 1988, ch. 319, § 1; Laws, 1989, ch. 568, § 1; Laws, 1995, ch. 443, § 1; Laws, 2001, ch. 491, § 1; Laws, 2008, ch. 491, § 1; Laws, 2010 2nd Ex Sess, ch. 27, effective upon passage (approved Sept. 3, 2010); Laws, 2011, ch. 363, § 1; Laws, 2012, ch. 493, § 1, eff from and after July 1, 2012.

Editor's Note — The preamble to Laws of 2010, 2nd Extraordinary Session, ch. 27, provides:

“WHEREAS, the Mississippi Legislature finds that there is a growing use of the unregulated synthetic cannabinoids commonly known as K2 or synthetic marihuana; and

“WHEREAS, preliminary studies indicate that the three synthetic cannabinoid substances unregulated in Mississippi are from three to over 100 times more potent than THC, the active ingredient found in marihuana; and

“WHEREAS, many states as well as the federal government have already included one or more of these chemical compounds on Schedules of Controlled Substances, but none of these chemicals are currently listed on Mississippi's Schedule of Controlled Substances; and

“WHEREAS, synthetic cannabinoids are referred to as the new marihuana, and K2 is gaining in popularity at an alarming rate among high school and college students and persons on probation and parole; and

“WHEREAS, while having the same or stronger physiological effects as high potency marihuana, synthetic marihuana or K2 does not show a positive reading in a urinalysis test which adds to the desirability and increased growth among drug abusers and increases the threat to public health and safety by avoiding detection; and

“WHEREAS, the Mississippi Legislature should address the growing threat of synthetic cannabinoids to the health, safety and welfare of our citizens before the problem becomes epidemic in the State of Mississippi.”

Laws of 2011, ch. 363, § 3, effective from and after March 11, 2011, provides:

“SECTION 3. Section 1 of this act shall be known as the DeWayne Crenshaw Act.”

This section is being set out to correct an error in the 2011 Cumulative Supplement. In (c)(25), the phrase “and/or synthetic substances” was substituted for “and/or synthetic substances.”

Amendment Notes — The 2010 amendment (ch. 27, 2nd Ex Sess) added subsection headings in (a), (b), (c) and (e); in (c), rewrote the introductory paragraph, rewrote (25), and added (38); and made minor stylistic changes.

The 2011 amendment rewrote (c)(38) and (e).

The 2012 amendment added (c)(12); rewrote (c)(39)(B) through (F); and added (c)(39)(G), and (H).

JUDICIAL DECISIONS

1.5. Amending indictment.

Denial of appellant inmate's motion for post-conviction collateral relief was proper because the original indictment

charging appellant with manufacturing a controlled substance referred to the substance as marijuana but cited the statute section referencing ibogaine, and amend-

ing the indictment to correct the citation did not alter the essential facts of the offense, nor did it prejudice the inmate's defense. *Brown v. State*, 12 So. 3d 586 (Miss. Ct. App. 2009).

§ 41-29-115. Schedule II of controlled substances.

(A) The controlled substances listed in this section are included in Schedule II.

SCHEDULE II

(a) **Substances, vegetable origin or chemical synthesis.** — Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding naloxone hydrochloride, apomorphine, thebaine-derived butorphanol, dextrophan, nalbuphine, nalmefene and naltrexone, but including the following:

- (i) Codeine;
- (ii) Dihydroetorphine;
- (iii) Ethylmorphine;
- (iv) Etorphine hydrochloride;
- (v) Granulated opium;
- (vi) Hydrocodone;
- (vii) Hydromorphone;
- (viii) Metopon;
- (ix) Morphine;
- (x) Opium extracts;
- (xi) Opium fluid extracts;
- (xii) Oripavine;
- (xiii) Oxycodone;
- (xiv) Oxymorphone;
- (xv) Powdered opium;
- (xvi) Raw opium;
- (xvii) Thebaine;
- (xviii) Tincture of opium.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of cocaine or coca leaves, including cocaine and ecgonine and any salt, compound, derivative, isomer, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

(b) **Opiates.** Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specified chemical designation, dextrophan and levopropoxyphene excepted:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alpha-acetylmethadol (levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);
- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
- (17) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;
- (18) Pethidine (meperidine);
- (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanyl;
- (27) Sufentanil;
- (28) Tapentadol.

(c) **Stimulants.** Any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Phenmetrazine and its salts;

(3) Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;

(4) Methylphenidate and its salts;

(5) Lisdexamphetamine, its salts, isomers and salts of isomers.

(d) **Depressants.** Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

(4) Glutethimide.

(e) **Hallucinogenic substances.** Nabilone [other names include: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one].

(f) **Immediate precursors.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Amphetamine and methamphetamine immediate precursor: Phenylacetone (other names include: phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone);

(2) Phencyclidine immediate precursors:

(i) 1-phenylcyclohexylamine;

(ii) 1-piperidinocyclohexanecarbonitrile (PCC);

(3) Fentanyl immediate precursor: 4-anilino-N-phenethyl-4-piperidine (ANPP);

(g) **Other substances.** Pentazocine and its salts in injectable dosage form.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule II controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.24 or 1308.32, shall be exempted from the provisions of the Uniform Controlled Substances Law.

SOURCES: Codes, 1942 § 5831-58; Laws, 1971, ch. 521, § 8; Laws, 1975, ch. 465, § 2; Laws, 1978, ch. 404, § 2; Laws, 1979, ch. 368, § 2; Laws, 1981, ch. 502, § 3; Laws, 1982, ch. 402, § 2; Laws, 1983, ch. 404, § 2; Laws, 1985, ch. 308, § 2; Laws, 1987, ch. 475, § 2; Laws, 1988, ch. 319, § 2; Laws, 1989, ch. 568, § 2; Laws, 1995, ch. 443, § 2; Laws, 2000, ch. 427, § 1; Laws, 2008, ch. 491, § 2; Laws, 2009, ch. 402, § 1; Laws, 2011, ch. 449, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment added catchlines in (A)(a)-(d) and (A)(g); added (A)(b)(28); deleted former (A)(d)(4) through (d)(7); added (A)(e) and (f); redesignated former (A)(d)(6) as (A)(g).

JUDICIAL DECISIONS

4.5. Guilty pleas.

Appellate court found no merit to defendant's claim that defendant improperly pled guilty to the transfer of hydrocodone, a Schedule II controlled substance under Miss. Code Ann. § 41-29-115(A)(1)(x), instead of Lortab, which defendant alleged

was a Schedule III controlled substance, because Lortab was a pain reliever that contained hydrocodone, thus making it a Schedule II drug. *Conlee v. State*, 23 So. 3d 535 (Miss. Ct. App. 2009), writ of certiorari denied by 22 So. 3d 1193, 2009 Miss. LEXIS 616 (Miss. 2009).

§ 41-29-117. Schedule III of controlled substances.

(A) The controlled substances listed in this section are included in Schedule III.

SCHEDULE III

(a) **Stimulants.** Any material, compound, mixture, or preparation which contains any quantity of the following substances or their salts, isomers, or salts of isomers, of the following substances:

- (1) Benzphetamine;
- (2) Chlorphentermine;
- (3) Clortermine;
- (4) Phendimetrazine.

(b) **Depressants.** Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

(2) Unless specifically excepted or unless listed in another schedule, any compound, mixture or preparation containing any of the following substances or any salt of the substances specifically included in this subsection (2) and one or more other active medicinal ingredients which are not listed in any other schedule:

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital;

(3) Any suppository dosage form containing any of the following substances or any salt of any of the substances specifically included in this subsection (3) approved by the Food and Drug Administration for marketing only as a suppository:

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital;

- (4) Chlorhexadol;
- (5) Embutramide;

(6) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers and salts of isomers, for which an application is approved under Section 505 of the Federal Food, Drug and Cosmetic Act;

(7) Ketamine; its salts, isomers, and salts of isomers; other names include (+)-2-(2-chlorophenyl)-2-(methylamino)cyclohexanone;

(8) Lysergic acid;

(9) Lysergic acid amide;

(10) Methypylon;

(11) Sulfondiethylmethane;

(12) Sulfonethylmethane;

(13) Sulfonmethane;

(14) Tiletamine and zolazepam or any salt thereof; other names for the tiletamine and zolazepam combination product include: telazol; other names for tiletamine include: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; other names for zolazepam include: 4-(2-fluorophenyl)-6,8-dihydro 1,3,8-trimethylpyrazolo-[3,4-e](1,4)-diazepin-7(1H)-one, flupyrzapon.

(c) Nalorphine.

(d) Any material, compound, mixture or preparation which contains any quantity of ephedrine or pseudoephedrine.

(e) **Narcotic drugs.** Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than one and eight-tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than one and eight-tenths (1.8) grams of codeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than three hundred (300) milligrams of dihydrocodeine (also known as hydrocodone), or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than three hundred (300) milligrams of dihydrocodeine (also known as hydrocodone), or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than one and eight-tenths (1.8) grams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or not more than ninety (90) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than three hundred (300) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or not more than fifteen (15) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than five hundred (500) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams, or not more than

twenty-five (25) milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than fifty (50) milligrams of morphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) **Anabolic steroids.** Any material, compound, mixture or preparation containing any quantity of any of the following anabolic steroids, which means any drug or hormonal substance chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids and dehydroepiandrosterone) that promotes muscle growth, unless listed in another schedule or excepted:

- (1) 3beta,17-dihydroxy-5a-androstane;
- (2) 3alpha,17beta-dihydroxy-5a-androstane;
- (3) 5alpha-androstan-3,17-dione;
- (4) 1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene);
- (5) 1-androstenediol (3alpha,17beta-dihydroxy-5alpha-androst-1-ene);
- (6) 4-androstenediol (3beta,17beta-dihydroxy-androst-4-ene);
- (7) 5-androstenediol (3beta,17beta-dihydroxy-androst-5-ene);
- (8) 1-androstenedione ([5alpha]-androst-1-en-3, 17-dione);
- (9) 4-androstenedione (androst-4-en-3,17-dione);
- (10) 5-androstenedione (androst-5-en-3,17-dione);
- (11) Bolasterone (7alpha,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
- (12) Boldenone (17beta-hydroxyandrost-1,4,-diene-3-one);
- (13) Boldione (androsta-1,4,-diene-3,17-dione);
- (14) Calusterone (7beta,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
- (15) Clostebol (4-chloro-17beta-hydroxyandrost-4-en-3-one);
- (16) Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methylandrost-1,4,-dien-3-one);
- (17) Delta1-dihydrotestosterone (also known as 1-testosterone) (17beta-hydroxy-5alpha-androst-1-en-3-one);
- (18) 4-dihydrotestosterone (17beta-hydroxy-androstan-3-one);
- (19) Drostanolone (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);
- (20) Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);
- (21) Fluoxymesterone (9-fluoro-17alpha-methyl-11beta, 17beta-dihydroxyandrost-4-en-3-one);
- (22) Formebolone (2-formyl-17alpha-methyl-11alpha,17beta-dihydroxyandrost-1, 4,-dien-3-one);
- (23) Furazabol (17alpha-methyl-17beta-hydroxyandrostano[2,3-c]-furan);
- (24) 13beta-ethyl-17alpha-hydroxygon-4-en-3-one;
- (25) 4-hydroxytestosterone (4,17beta-dihydroxyandrost-4-en-3-one);

- (26) 4-hydroxy-19-nortestosterone (4,17beta-dihydroxy-estr-4-en-3-one);
- (27) Desoxymethyltestosterone (17alpha-methyl-5alpha-androst-2-en-17beta-ol, also known as madol);
- (28) Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);
- (29) Mesterolone (1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);
- (30) Methandienone (17alpha-methyl-17beta-hydroxyandrost-1,4-dien-3-one);
- (31) Methandriol (17alpha-methyl-3beta, 17beta-dihydroxyandrost-5-ene);
- (32) Methenolone (1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);
- (33) 17alpha-methyl-3beta, 17beta-dihydroxy-5a-androstane;
- (34) 17alpha-methyl-3alpha, 17beta-dihydroxy-5a-androstane;
- (35) 17alpha-methyl-3beta, 17beta-dihydroxyandrost-4-ene;
- (36) 17alpha-methyl-4-hydroxynandrolone (17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);
- (37) Methyldienolone (17alpha-methyl-17beta-hydroxyestra-4,9(10)-dien-3-one);
- (38) Methyltrienolone (17alpha-methyl-17beta-hydroxyestra-4,9-11-trien-3-one);
- (39) Methyltestosterone (17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);
- (40) Mibolerone (7alpha,17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);
- (41) 17alpha-methyl-Delta1-dihydrotestosterone (17b beta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) (also known as 17-alpha-methyl-1-testosterone);
- (42) Nandrolone (17beta-hydroxyestr-4-en-3-one);
- (43) 19-nor-4-androstenediol (3beta,17beta-dihydroxyestr-4-ene);
- (44) 19-nor-4-androstenediol (3a,17beta-dihydroxyestr-4-ene);
- (45) 19-nor-5-androstenediol (3beta,17beta-dihydroxyestr-5-ene);
- (46) 19-nor-5-androstenediol (3alpha,17beta-dihydroxyestr-5-ene);
- (47) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene3,17-dione, 19-norandrosta-4,9(10)-diene-3,17-dione);
- (48) 19-nor-4-androstenedione (estr-4-en-3,17-dione);
- (49) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- (50) Norbolethone (13beta,17alpha-diethyl-17beta-hydroxygon-4-en-3-one);
- (51) Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);
- (52) Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);
- (53) Normethandrolone (17alpha-methyl-17beta-hydroxyestr-4-en-3-one);

(54) Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstan-3-one);

(55) Oxymesterone (17alpha-methyl-4,17beta-dihydroxyandrost-4-en-3-one);

(56) Oxymetholone (17alpha-methyl-2-hydroxymethylene-17beta-hydroxy-[5alpha]-androstan-3-one);

(57) Stanozolol (17alpha-methyl-17beta-hydroxy-[5alpha]-androst-2-eno[3,2-c]—pyrazole);

(58) Stenbolone (17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);

(59) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

(60) Testosterone (17beta-hydroxyandrost-4-en-3-one);

(61) Tetrahydrogestrinone (13beta,17alpha-diethyl-17beta-hydroxygon-4,9,11-trien-3-one);

(62) Trenbolone (17beta-hydroxyestr-4,9,11-trien-3-one);

(63) Any salt, ester, or ether of a drug or substance described in this paragraph. Except such term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, the person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this paragraph;

(64) Any salt, ester or ether of a drug or substance described or listed in this paragraph.

(g) Any material, compound, mixture or preparation which contains any quantity of buprenorphine or its salts.

(h) Any material, compound, mixture or preparation which contains any quantity of pentazocine or its salts in oral dosage form.

(i) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule III controlled substance other than butalbital, and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

SOURCES: Codes, 1942, § 6831-59; Laws, 1971, ch. 521, § 9; Laws, 1975, ch. 465, § 3; Laws, 1977, ch. 391, § 3; Laws, 1978, ch. 404, § 3; Laws, 1982, ch. 402, § 3; Laws, 1983, ch. 404, § 3; Laws, 1988, ch. 319, § 3; Laws, 1989, ch. 568, § 3; Laws, 1995, ch. 443, § 3; Laws, 2000, ch. 427, § 2; Laws, 2001, ch. 491, § 2; Laws, 2006, ch. 416, § 1; Laws, 2008, ch. 491, § 3; Laws, 2010, ch. 303, § 1; Laws, 2011, ch. 449, § 2, eff from and after July 1, 2011.

Editor's Note — Laws of 2010, ch. 303, § 5, provides:

"SECTION 5. This act does not apply to wholesale drug distributors licensed and regulated by the Mississippi Board of Pharmacy and registered with and regulated by the United States Drug Enforcement Administration and exempts them from storage, reporting, record keeping or physical security control requirements for controlled substances containing any material, compound, mixture or preparation which contains any quantity of ephedrine or pseudoephedrine."

Amendment Notes — The 2010 amendment added (A)(e), and made related redesignations and minor stylistic changes.

The 2011 amendment added sub catchlines to (A)(a), (b), (e), (f); redesignated former (A)(b)(13) as present (A)(b)(5); rewrote former (A)(d) and redesignated it as (A)(b)(7); added (A)(f)(13), (27) and (47); and inserted "other than butalbital" in (B).

§ 41-29-119. Schedule IV of controlled substances.

(A) The controlled substances listed in this section are included in Schedule IV.

SCHEDULE IV

(a) **Narcotic drugs.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains limited quantities of the following narcotic drugs, or any salts thereof:

(1) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene, including its salts (Darvon, Darvon-N; also found in Darvon compound and Darvocet-N, etc.).

(b) **Depressants.** Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Camazepam;

(5) Carisoprodol;

(6) Chloral betaine;

(7) Chloral hydrate;

(8) Chlordiazepoxide and its salts, but does not include chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and esterified estrogens;

(9) Clobazam;

(10) Clonazepam;

(11) Clorazepate;

(12) Clotiazepam;

(13) Cloxazolam;

(14) Delorazepam;

(15) Diazepam;

(16) Dichloralphenazone;

(17) Estazolam;

(18) Ethchlorvynol;

(19) Ethinamate;

- (20) Ethyl loflazepate;
- (21) Fludiazepam;
- (22) Flunitrazepam;
- (23) Flurazepam;
- (24) Fospropofol;
- (25) Halazepam;
- (26) Haloxazolam;
- (27) Ketazolam;
- (28) Loprazolam;
- (29) Lorazepam;
- (30) Lormetazepam;
- (31) Mazindol;
- (32) Mebutamate;
- (33) Medazepam;
- (34) Meprobamate;
- (35) Methohexital;
- (36) Methylphenobarbital;
- (37) Midazolam;
- (38) Nimetazepam;
- (39) Nitrazepam;
- (40) Nordiazepam;
- (41) Oxazepam;
- (42) Oxazolam;
- (43) Paraldehyde;
- (44) Petrichloral;
- (45) Phenobarbital;
- (46) Pinazepam;
- (47) Prazepam;
- (48) Quazepam;
- (49) Temazepam;
- (50) Tetrazepam;
- (51) Triazolam;
- (52) Zaleplon;
- (53) Zolpidem;
- (54) Zopiclone.

(c) Fenfluramine.

(d) **Stimulants.** Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (1) Diethylpropion;
- (2) Phentermine;
- (3) Pemoline (including any organometallic complexes and chelates thereof);
- (4) Pipradrol;
- (5) Sibutramine;
- (6) SPA ((-)-1-dimethylamino-1,2-diphenylethane).
- (7) Cathine ((+/-) Norpseudoephedrine);

- (8) Fencamfamin;
- (9) Fenproporex;
- (10) Mefenorex;
- (11) Modafinil.

- (e) **Other substances.** (1) Butorphanol (including its optical isomers);
(2) Tramadol.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule IV controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

SOURCES: Codes, 1942, § 6831-60; Laws, 1971, ch. 521, § 10; Laws, 1975, ch. 465, § 4; Laws, 1977, ch. 391, § 4; Laws, 1978 ch. 404, § 4; Laws, 1979, ch. 368, § 3; Laws, 1981, ch. 502, § 4; Laws, 1982, ch. 402, § 5; Laws, 1983, ch. 404, § 4; Laws, 1986, ch. 512, § 2; Laws, 1987, ch. 475, § 3; Laws, 1989, ch. 568, § 4; Laws, 1995, ch. 443, § 4; Laws, 1998, ch. 328, § 1; Laws, 2000, ch. 427, § 3; Laws, 2001, ch. 491, § 3; Laws, 2006, ch. 416, § 2; Laws, 2008, ch. 491, § 4; Laws, 2011, ch. 449, § 3, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment added sub catchlines to (A)(a) through (e); deleted former (A)(b)(4) which read: “Butorphanol”; added (A)(b)(5) and (A)(b)(24); added (A)(d)(7)-(11); and rewrote (A)(e).

§ 41-29-121. Schedule V of controlled substances.

(A) The controlled substances listed in this section are included in Schedule V:

SCHEDULE V

(a) **Narcotic drugs containing nonnarcotic active medicinal ingredients.** Any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable, medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred (200) milligrams of codeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(2) Not more than one hundred (100) milligrams of dihydrocodeine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(3) Not more than one hundred (100) milligrams of ethylmorphine, or any of its salts, per one hundred (100) milliliters or per one hundred (100) grams;

(4) Not more than two and five-tenths (2.5) milligrams of diphenoxylate and not less than twenty-five (25) micrograms of atropine sulphate per dosage unit;

(5) Not more than one hundred (100) milligrams of opium per one hundred (100) milliliters or per one hundred (100) grams;

(6) Not more than five-tenths (0.5) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit.

(b) **Stimulants.** Unless specifically excepted or listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers and salts of isomers: Pyrovalerone.

(c) **Depressants.** Unless specifically excepted or listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including their salts, isomers and salts of isomers:

(1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxypropionamid];

(2) Pregabalin [(S)-3- (aminomethyl)-5-methylhexanoic acid].

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule V controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

SOURCES: Codes, 1942, § 6831-61; Laws, 1971, ch. 521, § 11; Laws, 1978, ch. 404, § 5; Laws, 1979, ch. 368, § 4; Laws, 1983, ch. 404, § 5; Laws, 1986, ch. 512, § 3; Laws, 1989, ch. 568, § 5; 1995, ch. 443, § 5; Laws, 2006, ch. 416, § 3; Laws, 2008, ch. 491, § 5; Laws, 2011, ch. 449, § 4, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment added catchlines to (A)(a), (b); rewrote (A)(b); and added (A)(c).

§ 41-29-125. Rules and regulations relative to registration and control of manufacture, distribution and dispensing of controlled substances; delivery of Schedule II controlled substance by mail or other shipment to be made only to persons eighteen or older.

(1) The State Board of Pharmacy may promulgate rules and regulations relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this state and the distribution and dispensing of controlled substances into this state from an out-of-state location.

(a) Every person who manufactures, distributes or dispenses any controlled substance within this state or who distributes or dispenses any controlled substance into this state from an out-of-state location, or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance within this state or the distribution or dispensing of any controlled substance into this state from an out-of-state location, must obtain a registration issued by the State Board of Pharmacy, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing or the Mississippi Board of Veterinary Medicine, as appropriate, in accordance with its rules and the law of this state. Such

registration shall be obtained annually or biennially, as specified by the issuing board, and a reasonable fee may be charged by the issuing board for such registration.

(b) Persons registered by the State Board of Pharmacy, with the consent of the United States Drug Enforcement Administration and the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing or the Mississippi Board of Veterinary Medicine to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this article:

(1) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouse, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a valid prescription or in lawful possession of a Schedule V substance as defined in Section 41-29-121.

(d) The State Board of Pharmacy may waive by rule the requirement for registration of certain manufacturers, distributors or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where an applicant within the state manufactures, distributes or dispenses controlled substances and for each principal place of business or professional practice located out-of-state from which controlled substances are distributed or dispensed into the state.

(f) The State Board of Pharmacy, the Mississippi Bureau of Narcotics, the State Board of Medical Licensure, the State Board of Dental Examiners, the Mississippi Board of Nursing and the Mississippi Board of Veterinary Medicine may inspect the establishment of a registrant or applicant for registration in accordance with the regulations of these agencies as approved by the board.

(2) Whenever a pharmacy ships, mails or delivers any Schedule II controlled substance listed in Section 41-29-115 to a private residence in this state, the pharmacy shall arrange with the entity that will actually deliver the controlled substance to a recipient in this state that the entity will: (a) deliver the controlled substance only to a person who is eighteen (18) years of age or older; and (b) obtain the signature of that person before delivering the controlled substance. The requirements of this subsection shall not apply to a pharmacy serving a nursing facility or to a pharmacy owned and/or operated by a hospital, nursing facility or clinic to which the general public does not have access to purchase pharmaceuticals on a retail basis.

SOURCES: Codes, 1942, § 6831-63; Laws, 1971, ch. 521, § 13; Laws, 1983, ch. 488, § 36, ch. 522, § 14; Laws, 1984, ch. 354, § 2; Laws, 2001, ch. 470, § 2; Laws, 2009, ch. 469, § 4; Laws, 2011, ch. 466, § 1; Laws, 2011, ch. 546, § 34, eff from and after passage (approved Apr. 26, 2011.)

Joint Legislative Committee Note — Section 1 of ch. 466, Laws of 2011, effective from and after July 1, 2011 (approved March 30, 2011), amended this section. Section 34 of ch. 546, Laws of 2011, effective from and after passage (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of Section 34 of ch. 546, Laws of 2011, which contains language that specifically provides that it supersedes § 41-29-125 as amended by Laws of 2011, ch. 466.

Amendment Notes — The first 2011 amendment (ch. 466), added (2).

The second 2011 amendment (ch. 546), added “and the distribution and dispensing of controlled substances into this state from an out-of-state location” to the end of (1); rewrote the first sentence of (1)(a) and (e); and added (2).

§ 41-29-129. Revocation and suspension of registration.

(a) A registration to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the State Board of Pharmacy upon a finding that the registrant:

(1) Has willfully furnished false or fraudulent material information in any application filed under this article;

(2) Has been convicted of a felony within the past five (5) years and has not been pardoned and his citizenship restored under any state or federal law relating to any controlled substance;

(3) Has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances;

(4) Has violated or failed to comply with any state law or any duly promulgated regulation of the State Board of Pharmacy which reflects adversely on the registrant's reliability and integrity with respect to controlled substances;

(5) Has violated the Uniform Controlled Substances Law of the State of Mississippi;

(6) Has violated any duly promulgated rule or regulation of the State Board of Pharmacy pertaining to the manufacture, distribution, storage, possession, control or dispensing of controlled substances;

(7) Has been convicted of a violation relating to any substance defined in this article as a controlled substance;

(8) Has dispensed any controlled substance if the registrant knew the prescription was not valid under the provisions of this article.

(b) The State Board of Pharmacy may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(c) If the board or the State Board of Pharmacy suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been

concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state. All state professional or business licensing agencies shall promptly notify the bureau of all orders of suspensions or revocations which are the result of drug violations or drug-related matters.

(d) The bureau shall promptly notify the federal Drug Enforcement Administration of all orders suspending or revoking registration and all forfeitures of controlled substances.

SOURCES: Codes, 1942, § 6831-65; Laws, 1971, ch. 521, § 15; Laws, 1972, ch. 520, § 6; Laws, 1977, ch. 377; Laws, 2009, ch. 469, § 5; Laws, 2011, ch. 466, § 2, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment inserted “any state law or” following “Has violated or failed to comply with” near the beginning of (a)(4); redesignated former (1) through (4) as present (a) through (d).

§ 41-29-133. Records and inventories.

Joint Legislative Committee Note — In 2009, a typographical error in the fourth line of the section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by deleting the word “of” preceding “the Mississippi Bureau of Narcotics...” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

§ 41-29-137. Prescriptions.

(a)(1) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II, as set out in Section 41-29-115, may be dispensed without the written valid prescription of a practitioner. A practitioner shall keep a record of all controlled substances in Schedule I, II and III administered, dispensed or professionally used by him otherwise than by prescription.

(2) In emergency situations, as defined by rule of the State Board of Pharmacy, Schedule II drugs may be dispensed upon the oral valid prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of Section 41-29-133. No prescription for a Schedule II substance may be refilled unless renewed by prescription issued by a licensed medical doctor.

(b) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, as set out in Sections 41-29-117 and 41-29-119, shall not be dispensed without a written or oral valid prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(c) A controlled substance included in Schedule V, as set out in Section 41-29-121, shall not be distributed or dispensed other than for a medical purpose.

(d) An optometrist certified to prescribe and use therapeutic pharmaceutical agents under Sections 73-19-153 through 73-19-165 shall be authorized to prescribe oral analgesic controlled substances in Schedule IV or V, as pertains to treatment and management of eye disease by written prescription only.

(e) Administration by injection of any pharmaceutical product authorized in this section is expressly prohibited except when dispensed directly by a practitioner other than a pharmacy.

(f)(1) For the purposes of this article, Title 73, Chapter 21, and Title 73, Chapter 25, Mississippi Code of 1972, as it pertains to prescriptions for controlled substances, a “valid prescription” means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by:

(A) A practitioner who has conducted at least one (1) in-person medical evaluation of the patient; or

(B) A covering practitioner.

(2)(A) “In-person medical evaluation” means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

(B) “Covering practitioner” means a practitioner who conducts a medical evaluation other than an in-person medical evaluation at the request of a practitioner who has conducted at least one (1) in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine within the previous twenty-four (24) months and who is temporarily unavailable to conduct the evaluation of the patient.

(3) A prescription for a controlled substance based solely on a consumer’s completion of an online medical questionnaire is not a valid prescription.

(4) Nothing in this subsection (b) shall apply to:

(A) A prescription issued by a practitioner engaged in the practice of telemedicine as authorized under state or federal law; or

(B) The dispensing or selling of a controlled substance pursuant to practices as determined by the United States Attorney General by regulation.

SOURCES: Codes, 1942, § 6831-69; Laws, 1971, ch. 521, § 19; Laws, 2005, ch. 404, § 5; Laws, 2009, ch. 469, § 8; Laws, 2011, ch. 449, § 5, eff from and after July 1, 2011.

Joint Legislative Committee Note — A typographical error in subsection (b) of this section has been corrected by inserting the word “the” preceding “Federal Controlled Substances Act...” The Joint Legislative Committee on Compilation, Revision and Publication of Legislation ratified this correction at its July 22, 2010, meeting.

Amendment Notes — The 2011 amendment deleted “which is a prescription drug as determined under the Federal Controlled Substances Act” following “Sections 41-29-117 and 41-29-119” in the first sentence of (b).

§ 41-29-139. Prohibited acts; penalties.

(a) Except as authorized by this article, it is unlawful for any person knowingly or intentionally:

(1) To sell, barter, transfer, manufacture, distribute, dispense or possess with intent to sell, barter, transfer, manufacture, distribute or dispense, a controlled substance; or

(2) To create, sell, barter, transfer, distribute, dispense or possess with intent to create, sell, barter, transfer, distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in subsections (f) and (g) of this section or in Section 41-29-142, any person who violates subsection (a) of this section shall be sentenced as follows:

(1) In the case of controlled substances classified in Schedule I or II, as set out in Sections 41-29-113 and 41-29-115, except thirty (30) grams or less of marihuana or synthetic cannabinoids, and except a first offender as defined in Section 41-29-149(e) who violates subsection (a) of this section with respect to less than one (1) kilogram but more than thirty (30) grams of marihuana or synthetic cannabinoids, such person may, upon conviction, be imprisoned for not more than thirty (30) years and shall be fined not less than Five Thousand Dollars (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or both;

(2) In the case of a first offender who violates subsection (a) of this section with an amount less than one (1) kilogram but more than thirty (30) grams of marihuana or synthetic cannabinoids as classified in Schedule I, as set out in Section 41-29-113, such person is guilty of a felony and, upon conviction, may be imprisoned for not more than twenty (20) years or fined not more than Thirty Thousand Dollars (\$30,000.00), or both;

(3) In the case of thirty (30) grams or less of marihuana or synthetic cannabinoids, such person may, upon conviction, be imprisoned for not more than three (3) years or fined not more than Three Thousand Dollars (\$3,000.00), or both;

(4) In the case of controlled substances classified in Schedules III and IV, as set out in Sections 41-29-117 and 41-29-119, such person may, upon conviction, be imprisoned for not more than twenty (20) years and shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both; and

(5) In the case of controlled substances classified in Schedule V, as set out in Section 41-29-121, such person may, upon conviction, be imprisoned for not more than ten (10) years and shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Fifty Thousand Dollars (\$50,000.00), or both.

(c) It is unlawful for any person knowingly or intentionally to possess any controlled substance unless the substance was obtained directly from, or

pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article. The penalties for any violation of this subsection (c) with respect to a controlled substance classified in Schedules I, II, III, IV or V, as set out in Section 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including marihuana or synthetic cannabinoids, shall be based on dosage unit as defined herein or the weight of the controlled substance as set forth herein as appropriate:

“Dosage unit (d.u.)” means a tablet or capsule, or in the case of a liquid solution, one (1) milliliter. In the case of lysergic acid diethylamide (LSD) the term, “dosage unit” means a stamp, square, dot, microdot, tablet or capsule of a controlled substance.

For any controlled substance that does not fall within the definition of the term “dosage unit,” the penalties shall be based upon the weight of the controlled substance.

The weight set forth refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance.

If a mixture or substance contains more than one (1) controlled substance, the weight of the mixture or substance is assigned to the controlled substance that results in the greater punishment.

Any person who violates this subsection with respect to:

(1) A controlled substance classified in Schedule I or II, except marihuana or synthetic cannabinoids, in the following amounts shall be charged and sentenced as follows:

(A) Less than one-tenth (0.1) gram or one (1) dosage unit or less may be charged as a misdemeanor or felony. If charged by indictment as a felony: by imprisonment not less than one (1) nor more than four (4) years and a fine not more than Ten Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by imprisonment for up to one (1) year and a fine not more than One Thousand Dollars (\$1,000.00).

(B) One-tenth (0.1) gram but less than two (2) grams or two (2) dosage units but less than ten (10) dosage units, by imprisonment for not less than two (2) years nor more than eight (8) years and a fine of not more than Fifty Thousand Dollars (\$50,000.00).

(C) Two (2) grams but less than ten (10) grams or ten (10) dosage units but less than twenty (20) dosage units, by imprisonment for not less than four (4) years nor more than sixteen (16) years and a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00).

(D) Ten (10) grams but less than thirty (30) grams or twenty (20) dosage units but not more than forty (40) dosage units, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars (\$500,000.00).

(E) Thirty (30) grams or more or forty (40) dosage units or more, by imprisonment for not less than ten (10) years nor more than thirty (30) years and a fine of not more than One Million Dollars (\$1,000,000.00).

(2) Marihuana or synthetic cannabinoids in the following amounts shall be charged and sentenced as follows:

(A) Thirty (30) grams or less by a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Fifty Dollars (\$250.00). The provisions of this paragraph shall be enforceable by summons, provided the offender provides proof of identity satisfactory to the arresting officer and gives written promise to appear in court satisfactory to the arresting officer, as directed by the summons. A second conviction under this section within two (2) years shall be punished by a fine of Two Hundred Fifty Dollars (\$250.00) and not less than five (5) days nor more than sixty (60) days in the county jail and mandatory participation in a drug education program, approved by the Division of Alcohol and Drug Abuse of the State Department of Mental Health, unless the court enters a written finding that such drug education program is inappropriate. A third or subsequent conviction under this section within two (2) years is a misdemeanor punishable by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00) and confinement for not less than five (5) days nor more than six (6) months in the county jail. Upon a first or second conviction under this section, the courts shall forward a report of such conviction to the Mississippi Bureau of Narcotics which shall make and maintain a private, nonpublic record for a period not to exceed two (2) years from the date of conviction. The private, nonpublic record shall be solely for the use of the courts in determining the penalties which attach upon conviction under this section and shall not constitute a criminal record for the purpose of private or administrative inquiry and the record of each conviction shall be expunged at the end of the period of two (2) years following the date of such conviction;

(B) Additionally, a person who is the operator of a motor vehicle, who possesses on his person or knowingly keeps or allows to be kept in a motor vehicle within the area of the vehicle normally occupied by the driver or passengers, more than one (1) gram, but not more than thirty (30) grams, of marihuana or synthetic cannabinoids is guilty of a misdemeanor and upon conviction may be fined not more than One Thousand Dollars (\$1,000.00) and confined for not more than ninety (90) days in the county jail. For the purposes of this subsection, such area of the vehicle shall not include the trunk of the motor vehicle or the areas not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers;

(C) More than thirty (30) grams but less than two hundred fifty (250) grams may be fined not more than One Thousand Dollars (\$1,000.00), or confined in the county jail for not more than one (1) year, or both; or fined not more than Three Thousand Dollars (\$3,000.00), or imprisoned in the State Penitentiary for not more than three (3) years, or both;

(D) Two hundred fifty (250) grams but less than five hundred (500) grams, by imprisonment for not less than two (2) years nor more than eight (8) years and by a fine of not more than Fifty Thousand Dollars (\$50,000.00);

(E) Five hundred (500) grams but less than one (1) kilogram, by imprisonment for not less than four (4) years nor more than sixteen (16) years and a fine of less than Two Hundred Fifty Thousand Dollars (\$250,000.00);

(F) One (1) kilogram but less than five (5) kilograms, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars (\$500,000.00);

(G) Five (5) kilograms or more, by imprisonment for not less than ten (10) years nor more than thirty (30) years and a fine of not more than One Million Dollars (\$1,000,000.00).

(3) A controlled substance classified in Schedule III, IV or V as set out in Sections 41-29-117 through 41-29-121, upon conviction, may be punished as follows:

(A) Less than fifty (50) grams or less than one hundred (100) dosage units is a misdemeanor and punishable by not more than one (1) year and a fine of not more than One Thousand Dollars (\$1,000.00).

(B) Fifty (50) grams but less than one hundred fifty (150) grams or one hundred (100) dosage units but less than five hundred (500) dosage units, by imprisonment for not less than one (1) year nor more than four (4) years and a fine of not more than Ten Thousand Dollars (\$10,000.00).

(C) One hundred fifty (150) grams but less than three hundred (300) grams or five hundred (500) dosage units but less than one thousand (1,000) dosage units, by imprisonment for not less than two (2) years nor more than eight (8) years and a fine of not more than Fifty Thousand Dollars (\$50,000.00).

(D) Three hundred (300) grams but less than five hundred (500) grams or one thousand (1,000) dosage units but less than two thousand five hundred (2,500) dosage units, by imprisonment for not less than four (4) years nor more than sixteen (16) years and a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00).

(E) Five hundred (500) grams or more or two thousand five hundred (2,500) dosage units or more, by imprisonment for not less than six (6) years nor more than twenty-four (24) years and a fine of not more than Five Hundred Thousand Dollars (\$500,000.00).

(d)(1) It is unlawful for a person who is not authorized by the State Board of Medical Licensure, State Board of Pharmacy, or other lawful authority to use, or to possess with intent to use, paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars (\$500.00), or both; however, no person shall be charged with a violation of this subsection when such person is also charged with the possession of one (1) ounce or less of marihuana or synthetic cannabinoids under subsection (c)(2)(A) of this section.

(2) It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars (\$500.00), or both.

(3) Any person eighteen (18) years of age or over who violates subsection (d) (2) of this section by delivering or selling paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than one (1) year, or fined not more than One Thousand Dollars (\$1,000.00), or both.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as paraphernalia. Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars (\$500.00), or both.

(e) It shall be unlawful for any physician practicing medicine in this state to prescribe, dispense or administer any amphetamine or amphetamine-like anorectics and/or central nervous system stimulants classified in Schedule II, pursuant to Section 41-29-115, for the exclusive treatment of obesity, weight control or weight loss. Any person who violates this subsection, upon conviction, is guilty of a misdemeanor and may be confined for a period not to exceed six (6) months, or fined not more than One Thousand Dollars (\$1,000.00), or both.

(f) Except as otherwise authorized in this article, any person twenty-one (21) years of age or older who knowingly sells, barter, transfers, manufactures, distributes or dispenses during any twelve (12) consecutive month period: (i) ten (10) pounds or more of marihuana or synthetic cannabinoids; (ii) two (2) ounces or more of heroin; (iii) two (2) or more ounces of cocaine or of any mixture containing cocaine as described in Section 41-29-105(s), Mississippi Code of 1972; (iv) two (2) or more ounces of methamphetamine; or (v) one hundred (100) or more dosage units of morphine, Demerol, Dilaudid, oxycodone hydrochloride or a derivative thereof, or 3,4-methylenedioxymethamphetamine (MDMA) shall be guilty of a felony and, upon conviction thereof, shall be sentenced to life imprisonment and such sentence shall not be reduced or suspended nor shall such person be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and

47-7-33, Mississippi Code of 1972, to the contrary notwithstanding. The provisions of this subsection shall not apply to any person who furnishes information and assistance to the bureau or its designee which, in the opinion of the trial judge objectively should or would have aided in the arrest or prosecution of others who violate this subsection. The accused shall have adequate opportunity to develop and make a record of all information and assistance so furnished.

(g)(1) Any person trafficking in controlled substances shall be guilty of a felony and, upon conviction, shall be imprisoned for a term of thirty (30) years and such sentence shall not be reduced or suspended nor shall such person be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the contrary notwithstanding and shall be fined not less than Five Thousand Dollars (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00).

(2) "Trafficking in controlled substances" as used herein means to engage in three (3) or more component offenses within any twelve (12) consecutive month period where at least two (2) of the component offenses occurred in different counties. A component offense is any act which would constitute a violation of subsection (a) of this section. Prior convictions shall not be used as component offenses to establish the charge of trafficking in controlled substances.

(3) The charge of trafficking in controlled substances shall be set forth in one (1) count of an indictment with each of the component offenses alleged therein and it may be charged and tried in any county where a component offense occurred. An indictment for trafficking in controlled substances may also be returned by the State Grand Jury of Mississippi provided at least two (2) of the component offenses occurred in different circuit court districts.

SOURCES: Codes, 1942, § 6831-70; Laws, 1971, ch. 521, § 20; Laws, 1972, ch. 520, § 7; Laws, 1977, ch. 482, § 1; Laws, 1981, ch. 502, § 5; Laws, 1982, chs. 323, § 2, 501, § 1; Laws, 1986, ch. 417; Laws, 1989, ch. 569, § 2; Laws, 1995, ch. 368, § 1; Laws, 1998, ch. 506, § 1; Laws, 1999, ch. 341, § 1; Laws, 2004, ch. 437, § 1; Laws, 2005, ch. 463, § 2; Laws, 2011, ch. 363, § 2, eff from and after passage (approved Mar. 11, 2011.)

Amendment Notes — The 2011 amendment inserted "or synthetic cannabinoids" following "marihuana" throughout; and made minor stylistic changes.

Cross References — Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony, see § 45-1-29.

Imposition of state assessment in addition to all other state assessments due under § 99-19-73 and all court imposed fines or other penalties for any violation of this section, see § 99-19-73.

JUDICIAL DECISIONS

I. IN GENERAL.

3. Constitutional questions.
4. Guilty plea.

II. ELEMENTS OF OFFENSE.

5. Possession; constructive possession.

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24. Insufficient evidence—possession.

I. IN GENERAL.

3. Constitutional questions.

Defendant was not denied a right to a fair trial on a charge of selling of cocaine, in violation of Miss. Code Ann. § 41-29-139(a), by two prosecutors' improper "link-in-the-chain" and "send-a-message" comments during closing arguments where the strength of the State's evidence against defendant was such that if the comments were removed, beyond a reasonable doubt, the jury would have reached the same verdict based on the evidence. *Harris v. State*, 37 So. 3d 1237 (Miss. Ct. App. 2010).

4. Guilty plea.

Where appellant was arrested for the sale of cocaine after an undercover officer purchased the cocaine from him, appellant requested the videotape of the transaction during discovery; the State complied with Miss. Unif. Cir. & Cty. R. 9.04 by giving the tape to defense counsel who viewed it. The fact that appellant did not view the videotape before entering his guilty plea did not affect the voluntariness of his guilty plea to the sale of cocaine under Miss. Code Ann. § 41-29-139; the record showed that the trial judge informed appellant of the charges against

him, the consequences of his plea, and the penalties provided by law. *Gray v. State*, 29 So. 3d 791 (Miss. Ct. App. 2009), writ of certiorari denied en banc by 2010 Miss. LEXIS 139 (Miss. Mar. 11, 2010).

II. ELEMENTS OF OFFENSE.

5. Possession; constructive possession.

Sufficient evidence supported a conviction of possession of a controlled substance in violation of Miss. Code Ann. § 41-29-139(c)(1) (2005) because defendant had dominion and control over crack cocaine, which he had accepted from the driver of a car and held and concealed in his hand at the time police made a traffic stop of the vehicle. *Lewis v. State*, 17 So. 3d 618 (Miss. Ct. App. 2009).

Evidence was legally sufficient to establish defendant's constructive possession of drugs found in his residence during the execution of a search warrant because no one else was found in the house, defendant's wife was outside the residence when the police arrived, three individuals were standing in the front yard and each denied possession of the drugs, defendant was found within arm's reach of a bag of crack cocaine found in a couch cushion and in close proximity to a bag containing cocaine and hydromorphone that was discovered on the kitchen floor in front of the refrigerator, and no one else was found inside the house near the couch where the cocaine was found. *Roach v. State*, 7 So. 3d 911 (Miss. 2009), writ of certiorari denied by 130 S. Ct. 399, 175 L. Ed. 2d 274, 2009 U.S. LEXIS 7474, 78 U.S.L.W. 3206 (U.S. 2009).

Where law enforcement officers obtained a search warrant to search a camper, where they entered the camper and found three individuals—the camper's owner, defendant, and a third party, where drugs were in plain view on a table in close proximity to defendant upon the law enforcement officers' entry into the camper, and where defendant subsequently confessed that the drugs belonged to her and that she manufactured methamphetamine, the weight of the evidence supported the jury's finding of construc-

tive possession, even though defendant recanted her confession and the camper's owner testified that the drugs did not belong to defendant; because the jury's verdict was not contrary to the weight of the evidence, the trial court did not err in denying defendant's motion for a new trial. *Cheatham v. State*, 12 So. 3d 598 (Miss. Ct. App. 2009).

When an officer saw defendant drop a bag at his feet, the recovered bag was confirmed through testing to contain crack cocaine. During defendant's trial for possession of cocaine, the trial court did not err in denying his instruction as to actual possession because it was not required to sustain a conviction under Miss. Code Ann. § 41-29-139; the trial court properly granted the State's instructions as to constructive possession. *Butler v. State*, 19 So. 3d 111 (Miss. Ct. App. 2009), writ of certiorari denied by 19 So. 3d 82, 2009 Miss. LEXIS 490 (Miss. 2009).

III. PROSECUTION; PROCEDURE.

11. Indictment.

Trial court did not err in denying appellant's petition for post-conviction relief because appellant failed to offer proof that the internal correction on the indictment charging him with the sale of cocaine was made after the grand jury approved the indictment, and the two offenses at the top of the indictment with the correct controlled substance of marijuana were typed in after the grand jury's approval; the indictment only had an internal inconsistency and did not contain the wrong controlled substance throughout. *Miller v. State*, 61 So. 3d 944 (Miss. Ct. App. 2011).

Although appellant alleged that his original indictment contained a defect because it only referenced the enhancement statute, Miss. Code Ann. § 41-29-142, not Miss. Code Ann. § 41-29-139, under which he ultimately pleaded guilty, it was apparent that the reason for the different statute was a result of appellant's plea agreement with the State in order to receive the more lenient sentence available under § 41-29-139; consequently, there was no error in the disparity between the indictment and sentencing order. Regardless, appellant waived any claim of defect with his entry of a guilty plea. *Graham v.*

State, 85 So. 3d 860 (Miss. Ct. App. 2010), opinion withdrawn by, substituted opinion at 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011).

Indictment alleging that defendant sold cocaine was adequate because the indictment did not have to contain the alleged weight of the cocaine. *Harris v. State*, 17 So. 3d 1115 (Miss. Ct. App. 2009), writ of certiorari denied by 17 So. 3d 99, 2009 Miss. LEXIS 452 (Miss. 2009).

14. Jury instructions.

Circuit court's jury instruction on the meaning and/or elements of the crime of possession of cocaine with the intent to distribute was adequate and should have been understood by a reasonable jury because the instruction contained all of the elements of the crime of possession of cocaine with the intent to distribute. *Peterson v. State*, 37 So. 3d 669 (Miss. Ct. App. 2010).

15. Sentence.

After pleading guilty to two counts of selling less than 30 grams of marijuana, Miss. Code Ann. § 41-29-139(b)(3), and receiving a nine-year sentence, an inmate's post-conviction relief motion, claiming the sentence constituted cruel and unusual punishment, was properly dismissed because although the maximum sentence for each count was three years, the inmate was subject to enhanced punishment as a subsequent offender, pursuant to Miss. Code Ann. § 41-29-147, and as a habitual offender, pursuant to Miss. Code Ann. § 99-19-81; the sentence did not exceed the statutory maximum. *Wooten v. State*, 73 So. 3d 547 (Miss. Ct. App. 2011).

State failed to prove defendant's sale of cocaine to a confidential informant occurred within 1,500 feet of a public park because the record contained no evidence establishing that the real property where the sale occurred was in fact a public park; however, the State's failure had no effect on defendant's sentence because the trial judge did not use park proximity to increase defendant's penalty beyond the statutory maximum, but rather, the determining sentencing factor was defendant's forty-two prior misdemeanor convictions, and defendant's sentence was well below

the general statutory maximum of thirty years listed in Miss. Code Ann. § 41-29-139(b)(1). *Pearson v. State*, 64 So. 3d 569 (Miss. Ct. App. 2011).

Trial court did not err in denying appellant's petition for post-conviction relief because appellant sentence and fine for the sale of marijuana under Miss. Code Ann. § 41-29-139 did not violate the statutory maximum and was not illegal; the trial court had no discretion due to the effect of Miss. Code Ann. § 99-19-81, and accordingly, appellant received the maximum sentence and fine for the offense without eligibility for parole or probation under § 99-19-81, and the sentence was doubled under the Uniform Controlled Substances Act, Miss. Code Ann. § 41-29-147. *Miller v. State*, 61 So. 3d 944 (Miss. Ct. App. 2011).

Denial of post-conviction relief to an inmate was error as under Miss. Code Ann. § 47-7-34, the circuit court had lacked jurisdiction to extend the inmate's term of post-release supervision (PRS) beyond the three-year maximum authorized by Miss. Code Ann. § 41-29-139(b)(3), and therefore, the inmate's PRS had expired before the circuit court revoked the inmate's suspended sentence for violation of the terms of the extended PRS. *Allen v. State*, 62 So. 3d 450 (Miss. Ct. App. 2011).

Although appellant's sentence was a violation of Miss. Code Ann. § 47-5-1003(1), this did not constitute reversible error; appellant did not suffer any prejudice by the imposition of house arrest and where a defendant is given an illegal sentence that is more favorable than what the legal sentence would have been, he/she is not later entitled to relief through a post-conviction action. *Graham v. State*, 85 So. 3d 860 (Miss. Ct. App. 2010), opinion withdrawn by, substituted opinion at 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011).

Circuit court sentenced appellant to eight years, which clearly was within the statutory authority; although appellant claimed she was a first-time offender, she was previously charged three times for driving under the influence and she was addicted to marijuana and alcohol. *Field v. State*, 28 So. 3d 697 (Miss. Ct. App. 2010).

Appellant inmate's sentence did not fail to comply with Miss. Code Ann. § 47-7-34,

because he was sentenced to twenty years, which was well within the statutory guidelines for possession with intent to distribute, and his term of incarceration plus his post-release supervision did not exceed the maximum sentence of thirty years as prescribed by Miss. Code Ann. § 41-29-139(b)(1). *Burks v. State*, 37 So. 3d 1219 (Miss. Ct. App. 2010).

Appellant inmate's sentence did not fail to comply with Miss. Code Ann. § 47-7-34, because he was sentenced to twenty years, which was well within the statutory guidelines for possession with intent to distribute, and his term of incarceration plus his post-release supervision did not exceed the maximum sentence of thirty years as prescribed by Miss. Code Ann. § 41-29-139(b)(1). *Burks v. State*, 37 So. 3d 1219 (Miss. Ct. App. 2010).

After conviction on a charge of possession of cocaine in an amount greater than thirty grams, within 1,500 feet of a church, with intent to distribute, defendant's postconviction review motion was correctly denied because no conflict existed between the circuit court's oral pronouncement of the sentence and its written order. Both clearly reflected that defendant was sentenced to a term of 30 years, followed by five years of post-release supervision, for violating Miss. Code Ann. §§ 41-29-139 and 41-29-142. *Chandler v. State*, 27 So. 3d 1199 (Miss. Ct. App. 2010).

In a case in which defendant's conviction for possession of approximately 2.37 grams of cocaine was his second drug offense, pursuant to Miss. Code Ann. § 41-29-147, he was subject to twice the maximum sentence of 30 years set forth in Miss. Code Ann. § 41-29-139(b)(1), and as a habitual offender, he was also subject to an additional enhanced penalty under Miss. Code Ann. § 99-19-83, which called for a mandatory life sentence, his life sentence was not disproportionate to the crime and did not constitute cruel and unusual punishment. *Clay v. State*, 20 So. 3d 743 (Miss. Ct. App. 2009).

In a post-conviction proceeding in which defendant's habitual offender status was changed to reflect the sentence enhancement under Miss. Code Ann. § 41-29-147 for being a second or subsequent offender,

defendant argued unsuccessfully that his 16-year sentence with 12 years to serve and four years suspended on post-release supervision, and \$ 3,000 in fines was erroneously enhanced based on a prior misdemeanor offense. The State showed that he had a prior misdemeanor drug conviction, the applicable sentencing range for defendant's second offense was between a minimum of four years and a maximum of 16 years with a fine of up to \$ 100,000, and § 41-29-147 allowed the doubling of his sentence for a prior misdemeanor drug conviction. *Burris v. State*, 18 So. 3d 321 (Miss. Ct. App. 2009).

Defendant was entitled to resentencing after being convicted of possession of at least 10 grams, but less than 30 grams, of cocaine within 1,500 feet of a playground because although defendant was indicted pursuant to Miss. Code Ann. § 41-29-139(a)(1), the jury found defendant guilty under § 41-29-139(c)(1)(D); there was no sentence enhancement provision for crimes committed under that particular statute, regardless of whether the crime occurred within 1,500 feet of a school or park. *Daniels v. State*, 9 So. 3d 1194 (Miss. Ct. App. 2009).

Where appellant was convicted of selling a Schedule II controlled substance in violation of Miss. Code Ann. § 41-29-139, he had two previous felony convictions for grand larceny and the sale of a Schedule IV controlled substance. The circuit court determined he was eligible for enhanced sentencing as a habitual offender under Miss. Code Ann. §§ 99-19-81, 41-29-147 and sentenced him to thirty years in custody without parole. *Lacey v. State*, 29 So. 3d 786 (Miss. Ct. App. 2009), writ of certiorari denied en banc by 2010 Miss. LEXIS 136 (Miss. Mar. 11, 2010).

Because defendant's 15-year sentence for selling cocaine was within statutory limits and was consistent with the jury's verdict, the court rejected defendant's contention that his counsel was ineffective for failing to object to the sentence. *Thames v. State*, 5 So. 3d 1178 (Miss. Ct. App. 2009).

IV. EVIDENCE.

17. Admissibility — generally.

In defendant's trial on a charge of possession of cocaine with intent to distrib-

ute, a circuit court properly determined a defense witness's testimony was inadmissible, pursuant to Miss. R. Evid. 402, because the witness could neither verify nor deny that defendant had been transferring narcotics before he was arrested, and the witness had not seen whether defendant had discarded any narcotics while police attempted to apprehend him; thus, the witness's testimony was irrelevant. *Hosey v. State*, 77 So. 3d 507 (Miss. Ct. App. 2011), writ of certiorari denied by 78 So. 3d 906, 2012 Miss. LEXIS 19 (Miss. 2012).

There was no error, much less a miscarriage of justice, in admitting a bag of cocaine into evidence because a reasonable jury could have found that the bag of cocaine introduced at trial was the same bag defendant sold to a confidential informant the State satisfied the requirements of Miss. R. Evid. 901(a) because an officer testified that the moment the informant handed over the plastic bag, the officer sealed it in an evidence bag with a distinct identification number, and the officer identified the evidence bag as the same one he sealed right after the sale. *Pearson v. State*, 64 So. 3d 569 (Miss. Ct. App. 2011).

Defendant's conviction for the possession of at least 2, but less than 10, dosage units of hydrocodone in violation of Miss. Code Ann. § 41-29-139(c) was appropriate because the trial court did not err in admitting the recorded statement that he provided to an officer. The probative value of the evidence was not outweighed by its prejudicial effect under Miss. R. Evid. 404(a)(1) and (b) and defendant failed to consider that it was his attorney who agreed to have the statement pre-marked and who later suggested that it be entered into evidence. *Sistrunk v. State*, 48 So. 3d 557 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 629 (Miss. 2010).

Defendant's conviction for the possession of at least 2, but less than 10, dosage units of hydrocodone in violation of Miss. Code Ann. ' 41-29-139(c) was appropriate because the trial court did not err in admitting the recorded statement that he provided to an officer. The probative value of the evidence was not outweighed by its

prejudicial effect under Miss. R. Evid. 404(a)(1) and (b) and defendant failed to consider that it was his attorney who agreed to have the statement pre-marked and who later suggested that it be entered into evidence. *Sistrunk v. State*, 48 So. 3d 557 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 629 (Miss. 2010).

Evidence was legally sufficient to support the conviction of the sale of cocaine, Miss. Code Ann. § 41-29-139(a), and the State sufficiently established chain of custody, Miss. R. Evid. 901(a), and, therefore, properly included the cocaine and lab report into evidence; defendant failed to put forth any evidence of probable tampering or substitution of evidence, and the trial court did not err in admitting evidence of the cocaine. *Turner v. State*, 3 So. 3d 742 (Miss. 2009).

18. —Search and seizure.

Defendant's conviction under Miss. Code Ann. § 41-29-139(c)(1)(B) was affirmed because the articles of clothing defendant discarded while fleeing the officer were not entitled to Fourth Amendment protection because defendant lost any expectation of privacy with regard to that property. *Johnson v. State*, 22 So. 3d 1229 (Miss. Ct. App. 2009).

20. —Entrapment.

Defendant's conviction for the sale of cocaine was appropriate because she failed to prove that the State induced or led her to sell crack cocaine to the buyer. According to buyer's testimony, defendant had been selling drugs earlier in the day before he presented himself at her residence and it was clear that defendant was already predisposed to selling drugs; therefore, the defense of entrapment was not available to her. *Simmons v. State*, 13 So. 3d 844 (Miss. Ct. App. 2009).

22. Sufficient evidence—possession.

Defendant's conviction for the possession of at least 2, but less than 10, dosage units of hydrocodone in violation of Miss. Code Ann. § 41-29-139(c) was appropriate because the State met its burden of proving that defendant possessed a controlled substance. Although defendant had a prescription for hydrocodone, he did not have

a prescription for the 10 milligrams that were found in his possession; further, the officer testified that he recovered pills from defendant's truck and that those pills were later determined to have been hydrocodone. *Sistrunk v. State*, 48 So. 3d 557 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 629 (Miss. 2010).

Defendant's conviction for the possession of at least 2, but less than 10, dosage units of hydrocodone in violation of Miss. Code Ann. § 41-29-139(c) was appropriate because the State met its burden of proving that defendant possessed a controlled substance. Although defendant had a prescription for hydrocodone, he did not have a prescription for the 10 milligrams that were found in his possession; further, the officer testified that he recovered pills from defendant's truck and that those pills were later determined to have been hydrocodone. *Sistrunk v. State*, 48 So. 3d 557 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 629 (Miss. 2010).

In a case in which defendant appealed his conviction as a habitual offender for possession of approximately 2.37 grams of cocaine, in violation of Mississippi Code Ann. § 99-19-83, he argued unsuccessfully that the trial court erred in denying his motion for a new trial or, alternatively, for a judgment notwithstanding the verdict because the verdict was against the overwhelming weight of the evidence. There was sufficient evidence since: (1) the jury heard testimony from two officers that a bag of cocaine was found in the back seat of the vehicle and that defendant was the only passenger in the back seat; (2) both officers testified that defendant exhibited suspicious behavior before the stop and behaved in a nervous-like manner during the stop, unlike the other persons in the vehicle; (3) a crack pipe and a small amount of cocaine were found on defendant's person during the pat-down search; and (4) defendant gave an officer a false name. *Clay v. State*, 20 So. 3d 743 (Miss. Ct. App. 2009).

Trial court did not err in failing to grant a directed verdict because there was sufficient evidence for reasonable, fair-minded jurors to conclude that defendant

was guilty of possession of at least 10 grams, but less than 30 grams, of cocaine within 1,500 feet of a playground, in violation of Miss. Code Ann. § 41-29-139(c)(1)(D); officers found a brown paper bag containing five separate bags of cocaine on the driver's seat and a set of digital scales under the driver's seat of a car that defendant was driving. *Daniels v. State*, 9 So. 3d 1194 (Miss. Ct. App. 2009).

In a joint trial for the sale of cocaine, in violation of Miss. Code Ann. § 41-29-139(a)(1), an informant's testimony that the informant gave defendant one \$ 100 to purchase the cocaine was sufficient to prove the sale of cocaine. *Miller v. State*, 17 So. 3d 1109 (Miss. Ct. App. 2009), writ of certiorari denied by 17 So. 3d 99, 2009 Miss. LEXIS 456 (Miss. 2009).

23. —Sale or distribution, or intent as to same.

Sufficient circumstantial evidence supported defendant's conviction for conspiracy to distribute under Miss. Code Ann. §§ 97-1-1 (Supp. 2010) and 41-29-139 (Rev. 2009) as the evidence showed that a witness had purchased marijuana at defendant's house, that a large quantity of it was found in multiple locations throughout the house, that the house smelled strongly of it, and that digital scales and packaging materials were also found. Further, defendant admitted that the marijuana belonged to him. *Jackson v. State*, 73 So. 3d 1176 (Miss. Ct. App. 2011), writ of certiorari denied by 73 So. 3d 1168, 2011 Miss. LEXIS 523 (Miss. 2011).

Sufficient evidence supported defendant's conviction for possession of cocaine with the intent to distribute, Miss. Code Ann. § 41-29-139, despite defendant's argument that no one testified he sold cocaine, because there was video of defendant making several hand-to-hand transactions with people, defendant attempted to evade the police as they approached, defendant discarded cocaine in the process of evading the police, and defendant had approximately \$ 60 when he was arrested. *Hosey v. State*, 77 So. 3d 507 (Miss. Ct. App. 2011), writ of certiorari denied by 78 So. 3d 906, 2012 Miss. LEXIS 19 (Miss. 2012).

Evidence was sufficient to support defendant's conviction for selling cocaine

where a confidential informant testified that the informant went to defendant's trailer, greeted defendant, asked to see the cocaine the informant had arranged to purchase, entered the trailer, counted out money, placed the money on the kitchen counter, exited the trailer, and then waited in his vehicle until a plastic container was thrown out of the trailer onto the yard. The confidential informant's testimony was corroborated by video and audio tapes and the testimony of the agent who heard the drug sale over a remote audio device. *Liddell v. State*, 33 So. 3d 524 (Miss. Ct. App. 2010).

In a case in which defendant was convicted of unlawful possession of at least one-tenth but less than two grams of cocaine with intent to distribute, in violation of Miss. Code Ann. § 41-29-139, he argued unsuccessfully that the verdict was against the overwhelming weight of the evidence. Defendant had previously been convicted of the same offense, he was in possession of cocaine at the time of his arrest, a narcotics agent, who was with a police officer when defendant was arrested, identified him as the person who had sold him crack cocaine four days prior to the incident, at the time of the arrest, defendant did not possess any paraphernalia associated with smoking crack cocaine and that there was a large, separate amount of cocaine found inside the car, and defendant possessed a generous amount of cash at the time of his arrest. *Williams v. State*, 30 So. 3d 375 (Miss. Ct. App. 2010).

There was sufficient evidence to support the jury's decision that defendant was guilty of possession of methamphetamine with the intent to distribute because law enforcement officers found 684 tablets that contained pseudoephedrine, numerous precursors necessary to manufacture methamphetamine, critical components modified to manufacture methamphetamine, scales that were typically used to weigh methamphetamine prior to selling it, and small zip-lock baggies typically used to package methamphetamine prior to selling it, and an expert testified that the quantity of methamphetamine discovered was more than what most users would have for personal use; it is neces-

sary to consider that various items usable in drug manufacture were found when determining whether there was sufficient evidence to support a conviction for possession of methamphetamine with intent to distribute. *Bond v. State*, 42 So. 3d 587 (Miss. Ct. App. 2010), writ of certiorari denied by 42 So. 3d 24, 2010 Miss. LEXIS 455 (Miss. 2010).

Circuit court did not err in denying defendant's motion for a directed verdict because there was sufficient evidence to support his conviction for possession of cocaine with the intent to distribute; the credibility of an accomplice, who was given immunity in exchange for her testimony, was an issue for the jury, and the jury was informed that the accomplice was a cocaine addict, and that the accomplice received immunity for her testimony against defendant. Defendant's requested jury instructions were properly denied. *Peterson v. State*, 37 So. 3d 669 (Miss. Ct. App. 2010).

Defendant's conviction for the sale of cocaine, in violation of Miss. Code Ann. 41-29-139(a)(1), was supported by sufficient evidence because (1) two officers testified that they searched a confidential informant's person and vehicle before the buy occurred; (2) the officers also testified that they heard, over the sound device installed on the informant, the exchange between defendant and the informant that consummated the sale; (3) the informant testified that he immediately placed the drugs that he had purchased from defendant in the evidence bag and that he did not tamper with the evidence bag in any way after he placed the drugs in it. It was also confirmed by the crime lab that the substance in the evidence bag was indeed crack cocaine. *Buckley v. State*, 19 So. 3d 832 (Miss. Ct. App. 2009).

Evidence was sufficient to support a conviction for possession of crack cocaine with intent to distribute because defendant admitted to an intention to sell the crack cocaine that was found in defendant's bedroom, and there was evidence that defendant had also bought and sold cocaine on at least one prior occasion.

Jones v. State, 20 So. 3d 57 (Miss. Ct. App. 2009).

Where the State's witnesses testified that defendant contacted a confidential informant, asked him if he wanted to buy drugs, arranged a meeting, and placed crack cocaine on the hood of the informant's vehicle, defendant's conviction for the sale of cocaine was not against the overwhelming weight of the evidence. *Jefferson v. State*, 27 So. 3d 410 (Miss. Ct. App. 2009), writ of certiorari denied by 27 So. 3d 404, 2010 Miss. LEXIS 68 (Miss. 2010).

There was sufficient evidence to convict defendant for the sale of cocaine because he testified that he was the man depicted in the video recording giving the informant crack cocaine in a paper towel and receiving \$ 100 in return. Although defendant was delivering drugs for another person, he knew that he was to give drugs to the informant in exchange for money, and therefore he knowingly participated in the sale of drugs, making guilty of the sale of an illegal controlled substance. *Thames v. State*, 5 So. 3d 1178 (Miss. Ct. App. 2009).

Evidence was sufficient to withstand a directed verdict in a case involving the sale of cocaine because, even though the quality of a videotaped drug transaction was poor, it was up to the jury to evaluate the credibility of the witnesses, including a confidential informant. The jury watched the videotape and was informed of the informant's criminal history before deciding how much weight to give each during their deliberations. *Mosely v. State*, 4 So. 3d 1069 (Miss. Ct. App. 2009).

24. Insufficient evidence—possession.

Where there was no evidence that anyone knew that a trace amount of cocaine was present in defendant's pockets until the forensic examiner found it at the crime lab, the State did not prove beyond a reasonable doubt that defendant was aware of the cocaine's presence in his pockets, much less that he intentionally and consciously was in possession of it, both required elements of the crime of possession. *Hudson v. State*, 30 So. 3d 1199 (Miss. 2010).

RESEARCH REFERENCES

ALR. Construction and Application of State Drug Paraphernalia Acts. 23 A.L.R. 6th 307.

§ 41-29-140. Fines and penalties; violation of Section 41-29-139.

Cross References — Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

Imposition of state assessment in addition to all other state assessments due under § 99-19-73 and all court imposed fines or other penalties for any violation of § 41-29-139, see § 99-19-73.

§ 41-29-142. Enhanced penalties for sale, etc. of controlled substances in, on or within specified distances of schools, churches and certain other buildings.

JUDICIAL DECISIONS

2. Indictment.
4. Sufficient evidence.
5. Sentence.

2. Indictment.

Although appellant alleged that his original indictment contained a defect because it only referenced the enhancement statute, Miss. Code Ann. § 41-29-142, not Miss. Code Ann. § 41-29-139, under which he ultimately pleaded guilty, it was apparent that the reason for the different statute was a result of appellant's plea agreement with the State in order to receive the more lenient sentence available under § 41-29-139; consequently, there was no error in the disparity between the indictment and sentencing order. Regardless, appellant waived any claim of defect with his entry of a guilty plea. *Graham v. State*, 85 So. 3d 860 (Miss. Ct. App. 2010), opinion withdrawn by, substituted opinion at 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011).

4. Sufficient evidence.

Evidence was sufficient to support defendant's conviction of selling, transferring, or delivering cocaine within 1,500 feet of a church in violation of Miss. Code

Ann. § 41-29-142(1) (Rev. 2005); where a police officer testified the sale was 147 feet from church property, but the defendant testified the sale took place on a different street outside the 1,500-foot radius, it was the role of the jury to judge the credibility of conflicting witnesses. *Perkins v. State*, 37 So. 3d 656 (Miss. Ct. App. 2009), writ of certiorari denied by 36 So. 3d 455, 2010 Miss. LEXIS 321 (Miss. 2010).

5. Sentence.

State failed to prove defendant's sale of cocaine to a confidential informant occurred within 1,500 feet of a public park because the record contained no evidence establishing that the real property where the sale occurred was in fact a public park; however, the State's failure had no effect on defendant's sentence because the trial judge did not use park proximity to increase defendant's penalty beyond the statutory maximum, but rather, the determining sentencing factor was defendant's forty-two prior misdemeanor convictions, and defendant's sentence was well below the general statutory maximum of thirty years listed in Miss. Code Ann. § 41-29-139(b)(1). *Pearson v. State*, 64 So. 3d 569 (Miss. Ct. App. 2011).

Although appellant's sentence was a violation of Miss. Code Ann. § 47-5-1003(1), this did not constitute reversible error; appellant did not suffer any prejudice by the imposition of house arrest and where a defendant is given an illegal sentence that is more favorable than what the legal sentence would have been then he/she is not later entitled to relief through a post-conviction action. *Graham v. State*, 85 So. 3d 860 (Miss. Ct. App. 2010), opinion withdrawn by, substituted opinion at 85 So. 3d 860, 2011 Miss. App. LEXIS 33 (Miss. Ct. App. 2011).

After conviction on a charge of possession of cocaine in an amount greater than

thirty grams, within 1,500 feet of a church, with intent to distribute, defendant's postconviction review motion was correctly denied because no conflict existed between the circuit court's oral pronouncement of the sentence and its written order. Both clearly reflected that defendant was sentenced to a term of 30 years, followed by five years of post-release supervision, for violating Miss. Code Ann. §§ 41-29-139 and 41-29-142. *Chandler v. State*, 27 So. 3d 1199 (Miss. Ct. App. 2010).

RESEARCH REFERENCES

ALR. Construction and Application of State Drug Paraphernalia Acts. 23 A.L.R. 6th 679.

§ 41-29-144. Acquiring or obtaining possession of controlled substance, legend drug or prescription by misrepresentation, fraud and the like; penalty.

(1) It is unlawful for any person knowingly or intentionally to acquire or obtain possession or attempt to acquire or obtain possession of a controlled substance or a legend drug by larceny, embezzlement, misrepresentation, fraud, forgery, deception or subterfuge.

(2) It is unlawful for any person knowingly or intentionally to possess, sell, deliver, transfer or attempt to possess, sell, deliver or transfer a false, fraudulent or forged prescription of a practitioner.

(3) Any person who violates this section is guilty of a crime and upon conviction shall be confined for not less than one (1) year nor more than five (5) years and fined not more than One Thousand Dollars (\$1,000.00), or both.

SOURCES: Laws, 1977, ch. 375, § 2; Laws, 1980, ch. 336; Laws, 2012, ch. 430, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment inserted “or a legend drug” and “larceny, embezzlement” preceding “misrepresentation, fraud” in (1).

§ 41-29-146. False representation of prescription or legend drug; penalty.

(1) It shall be unlawful for any person to sell, produce, manufacture or possess with the intent to sell, produce, manufacture, distribute or dispense any substance which is falsely represented to be a prescription or legend drug or a controlled substance.

(2) The provisions of this section shall not apply to a law enforcement officer acting in the course and scope of his employment or to a medical practitioner, pharmacist or other person authorized to dispense or administer controlled substances.

(3) Any person who violates this section shall, upon conviction, be guilty of a felony and may be punished by confinement in the custody of the Department of Corrections for not more than five (5) years or by a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

SOURCES: Laws, 1982, ch. 415; Laws, 2009, ch. 532, § 1; Laws, 2012, ch. 424, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added “or a controlled substance” at the end of (1).

Cross References — Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

§ 41-29-147. Second and subsequent offenses.

JUDICIAL DECISIONS

2. Sentence.

After pleading guilty to two counts of selling less than 30 grams of marijuana, Miss. Code Ann. § 41-29-139(b)(3), and receiving a nine-year sentence, an inmate's post-conviction relief motion, claiming the sentence constituted cruel and unusual punishment, was properly dismissed because although the maximum sentence for each count was three years, the inmate was subject to enhanced punishment as a subsequent offender, pursuant to Miss. Code Ann. § 41-29-147, and as a habitual offender, pursuant to Miss. Code Ann. § 99-19-81; the sentence did not exceed the statutory maximum. *Wooten v. State*, 73 So. 3d 547 (Miss. Ct. App. 2011).

Trial court did not err in denying appellant's petition for post-conviction relief because appellant sentence and fine for the sale of marijuana under Miss. Code Ann. § 41-29-139 did not violate the statutory maximum and was not illegal; the trial court had no discretion due to the effect of Miss. Code Ann. § 99-19-81, and accordingly, appellant received the maximum sentence and fine for the offense without eligibility for parole or probation under § 99-19-81, and the sentence was

doubled under the Uniform Controlled Substances Act, Miss. Code Ann. § 41-29-147. *Miller v. State*, 61 So. 3d 944 (Miss. Ct. App. 2011).

In a case in which defendant's conviction for possession of approximately 2.37 grams of cocaine was his second drug offense, pursuant to Miss. Code Ann. § 41-29-147, he was subject to twice the maximum sentence of 30 years set forth in Miss. Code Ann. § 41-29-139(b)(1), and as a habitual offender, he was also subject to an additional enhanced penalty under Miss. Code Ann. § 99-19-83, which called for a mandatory life sentence, his life sentence was not disproportionate to the crime and did not constitute cruel and unusual punishment. *Clay v. State*, 20 So. 3d 743 (Miss. Ct. App. 2009).

In a post-conviction proceeding in which defendant's habitual offender status was changed to reflect the sentence enhancement under Miss. Code Ann. § 41-29-147 for being a second or subsequent offender, defendant argued unsuccessfully that his counsel was ineffective for advising him to plead guilty to an enhanced sentence based on a prior misdemeanor conviction, rather than a felony conviction. Since § 41-29-147 permitted the doubling of his

sentence for a prior misdemeanor drug conviction, his counsel was not ineffective for failing to object to the sentence enhancement. *Burris v. State*, 18 So. 3d 321 (Miss. Ct. App. 2009).

In a post-conviction proceeding in which defendant's habitual offender status was changed to reflect the sentence enhancement under Miss. Code Ann. § 41-29-147 for being a second or subsequent offender, defendant argued unsuccessfully that his 16-year sentence with 12 years to serve and four years suspended on post-release supervision, and \$3,000 in fines was erroneously enhanced based on a prior misdemeanor offense. The State showed that he had a prior misdemeanor drug conviction, the applicable sentencing range for defendant's second offense was between a minimum of four years and a maximum of sixteen years with a fine of up to \$100,000, and § 41-29-147 allowed the doubling of his sentence for a prior misdemeanor drug conviction. *Burris v. State*, 18 So. 3d 321 (Miss. Ct. App. 2009).

Defendant's 60-year sentence after he was convicted for the possession of methamphetamine precursors was appropriate and not disproportionate under Miss. Code Ann. §§ 41-29-313(1)(c) or 41-29-147

because it was within the legislature's prerogative to determine that three drug offense could result in a sentence of 60 years. The sentence was harsh, but not grossly disproportionate. *Houser v. State*, 29 So. 3d 813 (Miss. Ct. App. 2009), writ of certiorari denied en banc by 29 So. 3d 774, 2010 Miss. LEXIS 135 (Miss. 2010).

Where appellant was convicted of selling a Schedule II controlled substance in violation of Miss. Code Ann. § 41-29-139, he had two previous felony convictions for grand larceny and the sale of a Schedule IV controlled substance. The circuit court determined he was eligible for enhanced sentencing as a habitual offender under Miss. Code Ann. §§ 99-19-81, 41-29-147 and sentenced him to thirty years in custody without parole. *Lacey v. State*, 29 So. 3d 786 (Miss. Ct. App. 2009), writ of certiorari denied en banc by 2010 Miss. LEXIS 136 (Miss. Mar. 11, 2010).

Defendant was properly sentenced as a second and subsequent offender under the statute after defendant was convicted of selling cocaine because defendant's prior conviction for conspiracy to sell a controlled substance qualified as a prior conviction under the statute. *Linson v. State*, 9 So. 3d 1210 (Miss. Ct. App. 2009).

§ 41-29-148. Burden of proof of exemptions and exceptions; presumption as to holding of registration or order form.

JUDICIAL DECISIONS

2. Burden of proof met.

Defendant's conviction for the possession of at least 2, but less than 10, dosage units of hydrocodone in violation of Miss. Code Ann. § 41-29-139(c) was appropriate under Miss. Code Ann. § 41-29-148(1) because the State met its burden of proving that defendant possessed a controlled substance. Although defendant had a prescription for hydrocodone, he did not have a prescription for the 10 milligrams that were found in his possession; further, an officer testified that he recovered pills from defendant's truck and that those pills were later determined to have been hydrocodone. *Sistrunk v. State*, 48 So. 3d 557 (Miss. Ct. App. 2010), writ of certio-

rari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 629 (Miss. 2010).

Defendant's conviction for the possession of at least 2, but less than 10, dosage units of hydrocodone in violation of Miss. Code Ann. § 41-29-139(c) was appropriate under Miss. Code Ann. § 41-29-148(1) because the State met its burden of proving that defendant possessed a controlled substance. Although defendant had a prescription for hydrocodone, he did not have a prescription for the 10 milligrams that were found in his possession; further, an officer testified that he recovered pills from defendant's truck and that those pills were later determined to have been hydrocodone. *Sistrunk v. State*, 48 So. 3d

557 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 629 (Miss. 2010).

§ 41-29-150. Participation in drug rehabilitation programs; probation; expunction of record upon application to court.

(a) Any person convicted under Section 41-29-139 may be required, in the discretion of the court, as a part of the sentence otherwise imposed, or in lieu of imprisonment in cases of probation or suspension of sentence, to attend a course of instruction conducted by the bureau, the State Board of Health, or any similar agency, on the effects, medically, psychologically and socially, of the misuse of controlled substances. The course may be conducted at any correctional institution, detention center or hospital, or at any center or treatment facility established for the purpose of education and rehabilitation of those persons committed because of abuse of controlled substances.

(b) Any person convicted under Section 41-29-139 who is found to be dependent upon or addicted to any controlled substance shall be required, as a part of the sentence otherwise imposed, or in lieu of imprisonment in cases of parole, probation or suspension of sentence, to receive medical treatment for such dependency or addiction. The regimen of medical treatment may include confinement in a medical facility of any correctional institution, detention center or hospital, or at any center or facility established for treatment of those persons committed because of a dependence or addiction to controlled substances.

(c) Those persons previously convicted of a felony under Section 41-29-139 and who are now confined at the Mississippi State Hospital at Whitfield, Mississippi, or at the East Mississippi State Hospital at Meridian, Mississippi, for the term of their sentence shall remain under the jurisdiction of the Mississippi Department of Corrections and shall be required to abide by all reasonable rules and regulations promulgated by the director and staff of said institutions and of the Department of Corrections. Any persons so confined who shall refuse to abide by said rules or who attempt an escape or who shall escape shall be transferred to the State Penitentiary or to a county jail, where appropriate, to serve the remainder of the term of imprisonment; this provision shall not preclude prosecution and conviction for escape from said institutions.

(d)(1) If any person who has not previously been convicted of violating Section 41-29-139, or the laws of the United States or of another state relating to narcotic drugs, stimulant or depressant substances, other controlled substances or marihuana is found to be guilty of a violation of subsection (c) or (d) of Section 41-29-139, after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed three (3) years, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings

against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the bureau solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the penalties prescribed under this article for second or subsequent conviction, or for any other purpose. Discharge and dismissal under this subsection may occur only once with respect to any person; and

(2) Upon the dismissal of a person and discharge of proceedings against him under paragraph (1) of this subsection, the person may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained by the bureau under paragraph (1) of this subsection, all recordation relating to his arrest, indictment, trial, finding of guilt, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged, or that the person had satisfactorily served his sentence or period of probation and parole, it shall enter an order of expunction. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before such arrest or indictment. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, indictment or trial in response to any inquiry made of him for any purpose. A person as to whom an order has been entered, upon request, shall be required to advise the court, in camera, of the previous conviction and expunction in any legal proceeding wherein the person has been called as a prospective juror. The court shall thereafter and before the selection of the jury advise the attorneys representing the parties of the previous conviction and expunction.

(e) Every person who has been or may hereafter be convicted of a felony offense under Section 41-29-139 and sentenced under Section 41-29-150(c) shall be under the jurisdiction of the Mississippi Department of Corrections.

(f) It shall be unlawful for any person confined under the provisions of subsection (b) or (c) of this section to escape or attempt to escape from said institution, and, upon conviction, said person shall be guilty of a felony and shall be imprisoned for a term not to exceed two (2) years.

(g) It is the intent and purpose of the Legislature to promote the rehabilitation of persons convicted of offenses under the Uniform Controlled Substances Law.

SOURCES: Codes, 1942, § 6831-74(j-p); Laws, 1972, ch. 520, § 9; Laws, 1977, ch. 495, § 1; Laws, 1978, ch. 522, § 1; Laws, 1981, ch. 502, § 8; Laws, 2010, ch. 460, § 2, eff from and after July 1, 2010.

Editor's Note — Laws of 2010, ch. 460, § 3, provides:

“SECTION 3. This act shall take effect and be in force from and after July 1, 2010, and the provisions of this act shall be considered additional and supplemental to any other relief.”

Amendment Notes — The 2010 amendment rewrote the first four sentences and added the last two sentences of (d)(2); and made minor stylistic changes.

JUDICIAL DECISIONS

1. In general.
2. Relation to other statutes.

1. In general.

Miss. Code Ann. § 41-29-150(d)(2) does not enumerate possession of pseudoephedrine and ephedrine as one of the offenses that allows for the possibility of expungement; the statute's mention of stimulants is insufficient. *Fields v. State*, 17 So. 3d 1159 (Miss. Ct. App. 2009).

2. Relation to other statutes.

Guilty plea to possession of precursors used in the manufacture of a controlled

substance in violation of Miss. Code Ann. § 41-29-313(1)(b) could not be expunged under Miss. Code Ann. § 41-29-150(d)(2), because that statute did not enumerate possession of pseudoephedrine and ephedrine as one of the offenses that allowed for the possibility of expungement. *Fields v. State*, 17 So. 3d 1159 (Miss. Ct. App. 2009).

§ 41-29-153. Forfeitures.

Joint Legislative Committee Note — In 2009, an error in a statutory reference in (a)(3) and (a)(4) was corrected at the direction of co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, by substituting “...paragraph (1) or (2) of this subsection...” for “paragraph (1) or (2) of this section...” The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

JUDICIAL DECISIONS

4. Proximity presumption.

Where \$4,801 in cash was found in defendant's bedroom, along with and in close proximity to, marijuana and multiple items of drug paraphernalia, and there was testimony questioning the veracity of his assertions as to how much of the money was from illicit sources, the Circuit

court did not err in ruling that the defendant had failed to overcome the proximity presumption of Miss. Code Ann. § 41-29-153(a)(7) and ordering the forfeiture of the cash Four Thousand Eight Hundred One Dollars v. Lafayette County Metro Narcotics Unit, 22 So. 3d 394 (Miss. Ct. App. 2009).

§ 41-29-159. Powers of enforcement personnel; duty of certain individuals to notify Bureau of Narcotics of death caused by drug overdose.

Cross References — Imposition of state assessment in addition to all other state assessments due under § 99-19-73 and all court imposed fines or other penalties for any violation of § 41-29-139, see § 99-19-73.

RESEARCH REFERENCES

ALR. Authority of Public Official, Not Entail Traffic Stops, To Effectuate Whose Duties or Functions Generally Do Traffic Stop of Vehicle. 18 A.L.R.6th 519.

§ 41-29-176. Forfeiture of property other than controlled substance, raw material or paraphernalia.

(1) When any property other than a controlled substance, raw material or paraphernalia, the value of which does not exceed Twenty Thousand Dollars (\$20,000.00), is seized under the Uniform Controlled Substances Law, the property may be forfeited by the administrative forfeiture procedures provided for in this section.

(2) The attorney for or any representative of the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, either by certified mail, return receipt requested, or by personal delivery, to all persons who are required to be notified pursuant to Section 41-29-177(2), Mississippi Code of 1972.

(3) In the event that notice of intention to forfeit the seized property administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for or representative of the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.

(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:

- (a) A description of the property;
- (b) The approximate value of the property;
- (c) The date and place of the seizure;
- (d) The connection between the property and the violation of the Uniform Controlled Substances Law;
- (e) The instructions for filing a request for judicial review; and
- (f) A statement that the property will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.

(5) Any person claiming an interest in property which is the subject of a notice under this section may, within thirty (30) days after receipt of the notice or of the date of the first publication of the notice, file a petition to contest forfeiture signed by the claimant in the county court, if a county court exists,

or otherwise in the circuit court of the county in which the seizure is made or the county in which the criminal prosecution is brought, in order to claim an interest in the property. Upon the filing of the petition and the payment of the filing fees, service of the petition shall be made on the attorney for or representative of the seizing law enforcement agency, and the proceedings shall thereafter be governed by the rules of civil procedure.

(6) If no petition to contest forfeiture is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, distributed or disposed of in accordance with the provisions of Section 41-29-181, Mississippi Code of 1972.

SOURCES: Laws, 1988, ch. 474, § 1; Laws, 1996, ch. 511, § 2; Laws, 2012, ch. 495, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted “Twenty Thousand Dollars (\$20,000.00)” for “Ten Thousand Dollars (\$10,000.00)” in (1).

§ 41-29-181. Procedure for disposition of seized property; order directing disposition by bureau of narcotics.

(1) Regarding all controlled substances, raw materials and paraphernalia which have been forfeited, the circuit court shall by its order direct the Bureau of Narcotics to:

(a) Retain the property for its official purposes;

(b) Deliver the property to a government agency or department for official purposes;

(c) Deliver the property to a person authorized by the court to receive it; or

(d) Destroy the property that is not otherwise disposed, pursuant to the provisions of Section 41-29-154.

(2) All other property, real or personal, which is forfeited under this article, except as otherwise provided in Section 41-29-185, and except as provided in subsections (3), (7) and (8) of this section, shall be liquidated and, after deduction of court costs and the expenses of liquidation, the proceeds shall be divided and deposited as follows:

(a) In the event only one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, twenty percent (20%) of the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund of the state and eighty percent (80%) of the proceeds shall be deposited and credited to the budget of the participating law enforcement agency.

(b) In the event more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, eighty percent (80%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and twenty percent (20%) shall be divided equitably between or among the other

participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their twenty percent (20%), a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

If the criminal case is initiated by an officer of the Bureau of Narcotics and more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, the proceeds shall be divided equitably between or among the Bureau of Narcotics and other participating law enforcement agencies and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the Bureau of Narcotics and the other participating law enforcement agencies cannot agree on an equitable division of the proceeds, a petition shall be filed by any one of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

(3) All money which is forfeited under this article, except as otherwise provided by Section 41-29-185, shall be divided, deposited and credited in the same manner as set forth in subsection (2) of this section.

(4) All property forfeited, deposited and credited to the Mississippi Bureau of Narcotics under this article shall be forwarded to the State Treasurer and deposited in a special fund for use by the Mississippi Bureau of Narcotics upon appropriation by the Legislature.

(5) All real estate which is forfeited under the provisions of this article shall be sold to the highest and best bidder at a public auction for cash, such auction to be conducted by the chief law enforcement officer of the initiating law enforcement agency, or his designee, at such place, on such notice and in accordance with the same procedure, as far as practicable, as is required in the case of sales of land under execution at law. The proceeds of such sale shall first be applied to the cost and expense in administering and conducting such sale, then to the satisfaction of all mortgages, deeds of trust, liens and encumbrances of record on such property. The remaining proceeds shall be divided, forwarded and deposited in the same manner set out in subsection (2) of this section.

(6) All other property that has been forfeited shall, except as otherwise provided, be sold at a public auction for cash by the chief law enforcement officer of the initiating law enforcement agency, or his designee, to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation in the jurisdiction in which said law enforcement agency is located. Such notices shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be disposed of as follows:

(a) To any bona fide lienholder, secured party or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall be divided, forwarded and deposited in the same manner set out in subsection (2) of this section.

(7)(a) Any county or municipal law enforcement agency may maintain, repair, use and operate for official purposes all property, other than real property, money or such property that is described in subsection (1) of this section, that has been forfeited to the agency if it is free from any interest of a bona fide lienholder, secured party or other party who holds an interest in the property in the nature of a security interest. Such county or municipal law enforcement agency may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that the property can be released for its use. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the law enforcement agency shall be deemed to be the purchaser, and the certificate of title shall be issued to it as required by subsection (9) of this section.

(b)(i) If a vehicle is forfeited to or transferred to a sheriff's department, then the sheriff may transfer the vehicle to the county for official or governmental use as the board of supervisors may direct.

(ii) If a vehicle is forfeited to or transferred to a police department, then the police chief may transfer the vehicle to the municipality for official or governmental use as the governing authority of the municipality may direct.

(c) If a motor vehicle forfeited to a county or municipal law enforcement agency becomes obsolete or is no longer needed for official or governmental purposes, it may be disposed of in accordance with Section 19-7-5 or in the manner provided by law for disposing of municipal property.

(8) The Mississippi Bureau of Narcotics may maintain, repair, use and operate for official purposes all property, other than real property, money or such property as is described in subsection (1) of this section, that has been forfeited to the bureau if it is free from any interest of a bona fide lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest. In such case, the bureau may purchase the interest of a bona fide lienholder, secured party or other party who holds an interest so that such property can be released for use by the bureau.

The bureau may maintain, repair, use and operate such property with money appropriated to the bureau for current operations. If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law, the bureau is deemed to be the purchaser and the certificate of title shall be issued to it as required by subsection (9) of this section.

(9) The Department of Revenue shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

SOURCES: Laws, 1979, ch. 473, § 3; Laws, 1982, ch. 323, § 7; Laws, 1983, ch. 508; Laws, 1985, ch. 388, § 5; Laws, 1986, ch. 361, § 2; Laws, 1996, ch. 511, § 4; Laws, 2001, ch. 329, § 1; Laws, 2004, ch. 498, § 1; Laws, 2005, ch. 463, § 3; Laws, 2012, ch. 495, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment substituted “Department of Revenue” for “State Tax Commission” in (9).

ATTORNEY GENERAL OPINIONS

Drug forfeiture funds properly forfeited units and computer equipment for the may be donated by check to the appropriate entity for any law enforcement purpose, including but not limited to training expenses for city and county narcotics Circuit Court. Parrish, March 9, 2007, A.G. Op. #07-00116, 2007 Miss. AG LEXIS 91.

§ 41-29-185. Disposition of forfeited property transferred pursuant to federal property sharing provisions.

One hundred percent (100%) of any seized and forfeited property to be transferred to any state or local law enforcement agency under the provisions of 21 USCS Section 881(e)(1), 19 USCS Section 1616(a)(2), or other federal property sharing provisions, shall be credited to the budget of the state or local agency that directly participated in the seizure or forfeiture, for the specific purpose of increasing law enforcement resources for that specific state or local agency. Such transferred property must be used to augment existing state and local law enforcement budgets and not to supplant them.

SOURCES: Laws, 1986, ch. 361, § 1; Laws, 2012, ch. 495, § 3, eff from and after July 1, 2012.

Editor’s Note — 21 USCS Section 881(e)(1) referred to in this section was repealed by Act April 25, 2000, P.L. 106-185 § 2(c)(3) Stat. 210. The section had earlier been redesignated § 888 and was headnoted “Expedited procedures for seized conveyances.” 19 USCS Section 1616(a)(2) was repealed by Act Oct. 27, 1986, P.L. 99-570, Title 1, Subtitle Q, § 1836(b), 100 Stat. 3207-54. It provided for the disposition of forfeited property.

Amendment Notes — The 2012 amendment inserted “Section” twice, following “USCS.”

ATTORNEY GENERAL OPINIONS

Drug forfeiture funds properly forfeited units and computer equipment for the may be donated by check to the appropriate entity for any law enforcement purpose, including but not limited to training expenses for city and county narcotics Circuit Court. Parrish, March 9, 2007, A.G. Op. #07-00116, 2007 Miss. AG LEXIS 91.

§ 41-29-189. Drug Evidence Disposition Fund created; purpose; sources of funds.

There is created in the State Treasury a special fund to be known as the Drug Evidence Disposition Fund. The purpose of the fund shall be to provide funding for costs associated with the acquisition, storage, destruction or other disposition of evidence related to offenses under the Uniform Controlled Substances Act. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Mississippi Bureau of Narcotics. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

- (a) Monies appropriated by the Legislature;
- (b) The interest accruing to the fund;
- (c) Monies received under the provisions of Section 99-19-73;
- (d) Monies received from the federal government;
- (e) Donations; and
- (f) Monies received from such other sources as may be provided by or allowable under law.

SOURCES: Laws, 2010, ch. 495, § 4, eff from and after July 1, 2010.

§ 41-29-191. Collection of unused prescription pills and drugs brought to drug task force main office from residential sources.

On the first Monday of each month, each drug task force may collect prescription pills and drugs that are brought to the main office of the task force from residential sources, and shall transport the collected pills and drugs to the incinerator maintained by the Mississippi Bureau of Narcotics for disposal. For the purposes of this section, the term 'drug task force' means a drug or narcotics task force or enforcement team created through an interlocal cooperation agreement under Section 17-13-1 et seq.

SOURCES: Laws, 2012, ch. 469, § 1, eff from and after July 1, 2012.

ARTICLE 5.

OTHER NARCOTIC DRUG REGULATIONS.

SEC.

41-29-313. Purchase, possession, transfer, manufacture or distribution of listed chemical or drug with intent to unlawfully manufacture controlled substance prohibited; possession of anhydrous ammonia in unauthorized container constitutes prima facie evidence of intent to unlawfully manufacture controlled substance; purchase, possession, transfer or distribution of certain quantities of ephedrine and pseudoephedrine prohibited; rebuttable presumption of intent to manufacture for person in possession of certain quantities of ephedrine or pseudoephedrine; enhanced penalties for certain violations.

41-29-315. Repealed.

41-29-317. Creation of program to assist retailers in reporting suspicious activities related to methamphetamine problem.

§ 41-29-313. Purchase, possession, transfer, manufacture or distribution of listed chemical or drug with intent to unlawfully manufacture controlled substance prohibited; possession of anhydrous ammonia in unauthorized container constitutes prima facie evidence of intent to unlawfully manufacture controlled substance; purchase, possession, transfer or distribution of certain quantities of ephedrine and pseudoephedrine prohibited; rebuttable presumption of intent to manufacture for person in possession of certain quantities of ephedrine or pseudoephedrine; enhanced penalties for certain violations.

(1)(a) Except as authorized in this section, it is unlawful for any person to knowingly or intentionally:

(i) Purchase, possess, transfer, manufacture, attempt to manufacture or distribute any two (2) or more of the listed precursor chemicals or drugs in any amount with the intent to unlawfully manufacture a controlled substance;

(ii) Purchase, possess, transfer, manufacture, attempt to manufacture or distribute any two (2) or more of the listed precursor chemicals or drugs in any amount, knowing, or under circumstances where one reasonably should know, that the listed precursor chemical or drug will be used to unlawfully manufacture a controlled substance;

(b) The term "precursor drug or chemical" means a drug or chemical that, in addition to legitimate uses, may be used in manufacturing a controlled substance in violation of this chapter. The term includes any salt, optical isomer or salt of an optical isomer, whenever the existence of a salt, optical isomer or salt of optical isomer is possible within the specific chemical designation. The chemicals or drugs listed in this section are included by whatever official, common, usual, chemical or trade name designated. A "precursor drug or chemical" includes, but is not limited to, the following:

- (i) Ether;
- (ii) Anhydrous ammonia;
- (iii) Ammonium nitrate;
- (iv) Pseudoephedrine;
- (v) Ephedrine;
- (vi) Denatured alcohol (Ethanol);
- (vii) Lithium;
- (viii) Freon;
- (ix) Hydrochloric acid;
- (x) Hydriodic acid;
- (xi) Red phosphorous;
- (xii) Iodine;

- (xiii) Sodium metal;
- (xiv) Sodium hydroxide;
- (xv) Muriatic acid;
- (xvi) Sulfuric acid;
- (xvii) Hydrogen chloride gas;
- (xviii) Potassium;
- (xix) Methanol;
- (xx) Isopropyl alcohol;
- (xxi) Hydrogen peroxide;
- (xxii) Hexanes;
- (xxiii) Heptanes;
- (xxiv) Acetone;
- (xxv) Toluene;
- (xxvi) Xylenes.

(c) Any person who violates this subsection (1), upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed thirty (30) years and shall be fined not less than Five Thousand Dollars (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or both fine and imprisonment.

(2)(a) It is unlawful for any person to knowingly or intentionally steal or unlawfully take or carry away any amount of anhydrous ammonia or to break, cut, or in any manner damage the valve or locking mechanism on an anhydrous ammonia tank with the intent to steal or unlawfully take or carry away anhydrous ammonia.

(b)(i) It is unlawful for any person to purchase, possess, transfer or distribute any amount of anhydrous ammonia knowing, or under circumstances where one reasonably should know, that the anhydrous ammonia will be used to unlawfully manufacture a controlled substance.

(ii) The possession of any amount of anhydrous ammonia in a container unauthorized for containment of anhydrous ammonia pursuant to Section 75-57-9 shall be prima facie evidence of intent to use the anhydrous ammonia to unlawfully manufacture a controlled substance.

(c)(i) It is unlawful for any person to purchase, possess, transfer or distribute two hundred fifty (250) dosage units or fifteen (15) grams in weight (dosage unit and weight as defined in Section 41-29-139) of pseudoephedrine or ephedrine, knowing, or under circumstances where one reasonably should know, that the pseudoephedrine or ephedrine will be used to unlawfully manufacture a controlled substance.

(ii) Except as provided in this subparagraph, possession of one or more products containing more than twenty-four (24) grams of ephedrine or pseudoephedrine shall constitute a rebuttable presumption of intent to use the product as a precursor to methamphetamine or another controlled substance. The rebuttable presumption established by this subparagraph shall not apply to the following persons who are lawfully possessing the identified drug products in the course of legitimate business:

1. A retail distributor of the drug products described in this subparagraph possessing a valid business license or wholesaler;

2. A wholesale drug distributor, or its agents, licensed by the Mississippi State Board of Pharmacy;

3. A manufacturer of drug products described in this subparagraph, or its agents, licensed by the Mississippi State Board of Pharmacy;

4. A pharmacist licensed by the Mississippi State Board of Pharmacy; or

5. A licensed health care professional possessing the drug products described in this subparagraph (ii) in the course of carrying out his profession.

(d) Any person who violates this subsection (2), upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed five (5) years and shall be fined not more than Five Thousand Dollars (\$5,000.00), or both fine and imprisonment.

(3) Nothing in this section shall preclude any farmer from storing or using any of the listed precursor drugs or chemicals listed in this section in the normal pursuit of farming operations.

(4) Nothing in this section shall preclude any wholesaler, retailer or pharmacist from possessing or selling the listed precursor drugs or chemicals in the normal pursuit of business.

(5) Any person who violates the provisions of this section with children under the age of eighteen (18) years present may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section.

(6) Any person who violates the provisions of this section when the offense occurs in any hotel or apartment building or complex may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section. For the purposes of this subsection (6), the following terms shall have the meanings ascribed to them:

(a) "Hotel" means a hotel, inn, motel, tourist court, apartment house, rooming house or any other place where sleeping accommodations are furnished or offered for pay if four (4) or more rooms are available for transient guests.

(b) "Apartment building" means any building having four (4) or more dwelling units, including, without limitation, a condominium building.

(7) Any person who violates the provisions of this section who has in his possession any firearm, either at the time of the commission of the offense or at the time any arrest is made, may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section.

(8) Any person who violates the provisions of this section upon any premises upon which any booby trap has been installed or rigged may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section. For the purposes of this subsection, the term "booby trap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person making contact with the device. The term includes guns, ammunition or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices,

lines or wires with hooks attached, and devices designed for the production of toxic fumes or gases.

SOURCES: Laws, 1999, ch. 555, § 1; Laws, 2000, ch. 561, § 1; Laws, 2002, ch. 479, § 1; Laws, 2005, ch. 309, § 3; Laws, 2005, ch. 463, § 4; Laws, 2010, ch. 303, § 2, eff from and after July 1, 2010.

Editor's Note — Laws of 2010, ch. 303, § 5, provides:

“SECTION 5. This act does not apply to wholesale drug distributors licensed and regulated by the Mississippi Board of Pharmacy and registered with and regulated by the United States Drug Enforcement Administration and exempts them from storage, reporting, record keeping or physical security control requirements for controlled substances containing any material, compound, mixture or preparation which contains any quantity of ephedrine or pseudoephedrine.”

Amendment Notes — The 2010 amendment, deleted “and in Section 41-29-315” following “authorized in this section” in the introductory language in (1)(a).

Cross References — Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

JUDICIAL DECISIONS

- 3.5. Relation to other statutes.
4. Double jeopardy considerations.
5. Evidence.
9. Sentence.
10. Speedy trial.

3.5. Relation to other statutes.

Guilty plea to possession of precursors used in the manufacture of a controlled substance in violation of Miss. Code Ann. § 41-29-313(1)(b) could not be expunged under Miss. Code Ann. § 41-29-150(d)(2), because that statute did not enumerate possession of pseudoephedrine and ephedrine as one of the offenses that allowed for the possibility of expungement. *Fields v. State*, 17 So. 3d 1159 (Miss. Ct. App. 2009).

4. Double jeopardy considerations.

Defendant was properly charged with, tried for, convicted of, and sentenced for two distinct crimes of possessing methamphetamine precursors and possessing pseudoephedrine in violation of Miss. Code Ann. § 41-29-313(1)(a), (2)(c), where the pseudoephedrine was not listed as one of the methamphetamine precursors. *McClellan v. State*, 34 So. 3d 548 (Miss. 2010).

5. Evidence.

Evidence was sufficient to support defendant's convictions for possessing meth-

amphetamine precursors and possessing pseudoephedrine in violation of Miss. Code Ann. § 41-29-313(1)(a), (2)(c), where defendant admitted that he was aware of the presence and character of the particular substances and was intentionally and consciously in possession of them. *McClellan v. State*, 34 So. 3d 548 (Miss. 2010).

Evidence was sufficient that defendant possessed pills containing pseudoephedrine knowing that it would be unlawfully used to manufacture a controlled substance because his passenger had an illegal amount of pseudoephedrine, and defendant admitted that he drove her to purchase pills to sell for use in the eventual manufacture of methamphetamine. *Gales v. State*, 29 So. 3d 65 (Miss. Ct. App. 2009).

9. Sentence.

Defendant's 60-year sentence after he was convicted for the possession of methamphetamine precursors was appropriate and not disproportionate under Miss. Code Ann. §§ 41-29-313(1)(c) or 41-29-147 because it was within the legislature's prerogative to determine that three drug offenses could result in a sentence of 60 years. The sentence was harsh, but not grossly disproportionate. *Houser v. State*, 29 So. 3d 813 (Miss. Ct. App. 2009), writ of

certiorari denied en banc by 29 So. 3d 774, 2010 Miss. LEXIS 135 (Miss. 2010).

10. Speedy trial.

Defendant's conviction for the possession of methamphetamine precursors was appropriate because he was brought to trial within 275 days of his waiver of an arraignment and there was good cause

shown for some of the continuances that were duly granted. There was also nothing indicating that the State exercised a deliberate attempt to sabotage the defense by delaying the trial. *Houser v. State*, 29 So. 3d 813 (Miss. Ct. App. 2009), writ of certiorari denied en banc by 29 So. 3d 774, 2010 Miss. LEXIS 135 (Miss. 2010).

§ 41-29-315. Repealed.

Repealed by Laws of 2010, ch. 303, § 4, effective from and after July 1, 2010.

§ 41-29-315. [Laws, 2005, ch. 309, § 1; Laws, 2009, ch. 540, § 1, eff from and after July 1, 2009].

Editor's Note — Former § 41-29-315 restricted the over-the-counter purchase and sale of ephedrine and pseudoephedrine.

§ 41-29-317. Creation of program to assist retailers in reporting suspicious activities related to methamphetamine problem.

(1) The Bureau of Narcotics may develop and maintain a program to inform retailers about the methamphetamine problem in the state and devise procedures and forms for retailers to use in reporting to the Bureau of Narcotics suspicious purchases, thefts or other transactions involving any products under the retailer's control which contain a regulated precursor under the provisions of Section 41-29-313.

(2) Reporting by retailers as required by this section shall be voluntary.

(3) Retailers reporting information to the Bureau of Narcotics in good faith pursuant to this section shall be immune from civil and criminal liability for a violation of Section 41-29-313.

SOURCES: Laws, 2005, ch. 309, § 2; Laws, 2010, ch. 303, § 3, eff from and after July 1, 2010.

Editor's Note — Laws of 2010, ch. 303, § 5, provides:

"SECTION 5. This act does not apply to wholesale drug distributors licensed and regulated by the Mississippi Board of Pharmacy and registered with and regulated by the United States Drug Enforcement Administration and exempts them from storage, reporting, record keeping or physical security control requirements for controlled substances containing any material, compound, mixture or preparation which contains any quantity of ephedrine or pseudoephedrine."

Amendment Notes — The 2010 amendment, in (1), deleted "or 41-29-315 including, but not limited to, over-the-counter, nonprescription pseudoephedrine products" from the end; and in (3), deleted "or 41-29-315" from the end.

ARTICLE 7.

INTERCEPTION OF WIRE OR ORAL COMMUNICATIONS.

§ 41-29-533. Penalties for violations of this article.

Cross References — Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

CHAPTER 31

Commitment of Alcoholics and Drug Addicts for Treatment

SEC.

41-31-15. Costs of commitment and support.

§ 41-31-15. Costs of commitment and support.

The provisions of the law with respect to the costs of commitment and the cost of support, including the prohibition in Section 41-21-65 regarding the charging of extra fees and expenses to persons initiating commitment proceedings, methods of determination of persons liable therefor, and methods of determination of financial ability, and all provisions of law enabling the state to secure reimbursement of any such items of cost, applicable to the commitment to and support of the mentally ill persons in state hospitals, shall apply with equal force in respect to each item of expense incurred by the state in connection with the commitment, care, custody, treatment, and rehabilitation of any person committed to the state hospitals and maintained in any institution or hospital operated by the State of Mississippi under the provisions of this chapter.

SOURCES: Codes, 1942, § 436-08; Laws, 1950, ch. 349, § 8; Laws, 2010, ch. 398, § 7, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment inserted “the prohibition in Section 41-21-65 regarding the charging of extra fees and expenses to persons initiating commitment proceedings.”

Cross References — Chancery court clerk fee for commitment action, see § 25-7-9.

CHAPTER 33

Tuberculosis and Respiratory Diseases; Tuberculosis Sanatorium**§ 41-33-9. Order of commitment to hospital.**

Joint Legislative Committee Note — In 2009, a typographical error in the first paragraph was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation by substituting “...his commitment is in the best interest of the public’s health...” for “...his commitment

is to the best interest of the public's health..." The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

CHAPTER 39

Disposition of Human Bodies or Parts

In General	41-39-1
Revised Mississippi Uniform Anatomical Gift Act (UAGA)	41-39-101

IN GENERAL

SEC.

41-39-7. Bodies of deceased hospital patients to be turned over to educational institutions in certain cases.

§ 41-39-5. Disposition of unclaimed dead bodies.

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 41-39-5 did not create a private cause of action because there was no legislative intent, express or implied, that would support a finding of an actionable duty; the Legislature did not

intend to confer a private cause of action upon persons such as the deceased's siblings, and the supreme court would not impose liability. *Tunica County v. Gray*, 13 So. 3d 826 (Miss. 2009).

§ 41-39-7. Bodies of deceased hospital patients to be turned over to educational institutions in certain cases.

Upon the request of the Secretary of the State Board of Health, the authorities in charge of the hospitals supported either wholly or partly by state funds are authorized and directed to deliver any body of any person, except the bodies of persons with mental illness and persons with an intellectual disability, dying in any of those hospitals to the duly authorized representatives of the state university or any medical college or any accredited mortuary science program in any junior college in this state, giving the state university preference in the event there is an insufficiency in dissecting material for the use of all hospitals for anatomical purposes. This applies to the remains of any person, except persons with mental illness and persons with an intellectual disability, who dies in any of those hospitals, when the body is not, within a reasonable time after death, claimed for burial by some fraternal order, or by some person related to the deceased by blood or marriage, or by some friend. The State Board of Health shall have authority to adopt regulations for the proper burial of those persons with mental illness and persons with an intellectual disability. However, the human remains of any unknown person who is a traveler dying suddenly shall not be so delivered or used for anatomical purposes. Any human remains, so delivered, shall be properly and decently removed from the hospital, at the expense of the party to whom the

same may be delivered, and shall be transported under such regulations as the State Board of Health may prescribe, and after use for strictly necessary medical study, in the medical department of the university, or in any medical college, or in any accredited mortuary science program in any junior college in this state, as the case may be, the body shall be decently interred or may be cremated and the residue interred at the expense of the party using the same. The State Board of Health shall have authority to regulate and restrict the use of dead bodies used for the above purposes. The authorities of the hospitals, the Secretary of the State Board of Health, and the authorities of the university, any medical college and any accredited mortuary science program in any junior college in this state, shall each cause a record to be kept of each body used and disposed of, under the provisions of this section, and such records shall be subject to inspection of any member of the State Board of Health at any time.

SOURCES: Codes, Hemingway's 1917, § 7936; 1930, § 7203; 1942, § 6709; Laws, 1908, ch. 205; Laws, 1956, ch. 229; Laws, 1980, ch. 403, § 1; Laws, 1981, ch. 403, § 1; Laws, 2010, ch. 476, § 68, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted “persons with mental illness and persons with an intellectual disability” for “mentally ill and mentally retarded persons” in the first and second sentences; substituted “persons with mental illness and persons with an intellectual disability” for “mentally ill persons and mentally retarded persons” in the third sentence; and made minor stylistic changes.

REVISED MISSISSIPPI UNIFORM ANATOMICAL GIFT ACT (UAGA)

Sec.

41-39-149. Repealer.

§ 41-39-101. Short title [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 1; reenacted without change, Laws, 2012, ch. 346, § 1, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-103. Definitions [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 2; reenacted without change, Laws, 2012, ch. 346, § 2, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-105. Applicability [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 3; reenacted without change, Laws, 2012, ch. 346, § 3, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-107. Who may make anatomical gift before donor's death [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 4; reenacted without change, Laws, 2012, ch. 346, § 4, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-109. Manner of making anatomical gift before donor's death [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 5; reenacted without change, Laws, 2012, ch. 346, § 5, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-111. Amending or revoking anatomical gift before donor's death [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 6 reenacted without change, Laws, 2012, ch. 346, § 6, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-113. Refusal to make anatomical gift; effect of refusal [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 7; reenacted without change, Laws, 2012, ch. 346, § 7, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-115. Preclusive effect of anatomical gift, amendment, or revocation [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 8; reenacted without change, Laws, 2012, ch. 346, § 8, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-117. Who may make anatomical gift of decedent's body or part [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 9; reenacted without change, Laws, 2012, ch. 346, § 9, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-119. Manner of making, amending, or revoking anatomical gift of decedent's body or part [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 10 reenacted without change, Laws, 2012, ch. 346, § 10, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-121. Persons that may receive anatomical gift; purpose of anatomical gift [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 11; reenacted without change, Laws, 2012, ch. 346, § 11, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-123. Search and notification [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 12; reenacted without change, Laws, 2012, ch. 346, § 12, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-125. Delivery of document of gift not required; right to examine [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 13; reenacted without change, Laws, 2012, ch. 346, § 13, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-127. Rights and duties of procurement organization and others [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 14; reenacted without change, Laws, 2012, ch. 346, § 14, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-129. Coordination of procurement and use [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 15; reenacted without change, Laws, 2012, ch. 346, § 15, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-131. Sale or purchase of parts prohibited [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 16; reenacted without change, Laws, 2012, ch. 346, § 16, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

Cross References — Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

§ 41-39-133. Other prohibited acts [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 17; reenacted without change, Laws, 2012, ch. 346, § 17, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

Cross References — Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

§ 41-39-135. Immunity [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 18; reenacted without change, Laws, 2012, ch. 346, § 18, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears

in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-137. Law governing validity; choice of law as to execution of document of gift; presumption of validity [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 19; reenacted without change, Laws, 2012, ch. 346, § 19, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-139. Donor registry [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 20; reenacted without change, Laws, 2012, ch. 346, § 20, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-141. Effect of anatomical gift on advance health-care directive [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 21, reenacted without change, Laws, 2012, ch. 346, § 21, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-143. Notification of medical examiner if deceased patient is subject of medical-legal death investigation [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 22; reenacted without change, Laws, 2012, ch. 346, § 22, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-145. Uniformity of application and construction [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 23; reenacted without change, Laws, 2012, ch. 346, § 23, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-147. Relation to electronic signatures in global and national commerce act [Repealed effective July 1, 2014].

SOURCES: Laws, 2008, ch. 561, § 24; reenacted without change, Laws, 2012, ch. 346, § 24, eff from and after July 1, 2012.

Editor's Note — This section was reenacted without change by Laws of 2012, ch. 346, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

§ 41-39-149. Repealer.

Sections 41-39-101 through 41-39-147 shall stand repealed on July 1, 2014.

SOURCES: Laws, 2008, ch. 561, § 25; Laws, 2012, ch. 346, § 25, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment extended the repealer provision from “July 1, 2012” to “July 1, 2014.”

CHAPTER 41

Surgical or Medical Procedures; Consents

Federal Abortion-Mandate Opt-Out Act	41-41-95
Uniform Health-Care Decisions Act	41-41-201

ABORTION COMPLICATION REPORTING ACT

§ 41-41-77. Physicians to file regular reports to state on patients treated or dying in abortion procedures; confidentiality; sanctions for breach of confidentiality.

Cross References — Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

FEDERAL ABORTION-MANDATE OPT-OUT ACT

SEC.

41-41-95.	Title.
41-41-97.	Legislative findings and purpose.
41-41-99.	Opt-out.

§ 41-41-95. Title.

Sections 41-41-95 through 41-41-99 may be known and cited as the “Federal Abortion-Mandate Opt-Out Act.”

SOURCES: Laws, 2010, ch. 563, § 1, eff from and after passage (approved May 24, 2010.)

§ 41-41-97. Legislative findings and purpose.

(1) The Legislature of the State of Mississippi finds that under Section 1303 of the federal Patient Protection and Affordable Care Act, states are explicitly permitted to pass laws prohibiting qualified health plans offered through an exchange in their state from offering abortion coverage.

(2) It is the purpose of Sections 41-41-95 through 41-41-99 to affirmatively opt out of allowing qualified health plans that cover abortions to participate in exchanges within the State of Mississippi.

SOURCES: Laws, 2010, ch. 563, § 2, eff from and after passage (approved May 24, 2010.)

Editor’s Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in (1) was corrected by inserting the word “under” preceding “Section 1303.”

§ 41-41-99. Opt-out.

(1) No abortion coverage may be provided by a qualified health plan offered through an exchange created pursuant to the federal Patient Protection and Affordable Care Act within the State of Mississippi.

(2) This limitation shall not apply to an abortion performed (a) when the life of the mother is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or (b) when the pregnancy is the result of an alleged act of rape or incest. The physician is required to maintain sufficient documentation in the medical record that supports the medical necessity for the abortion for one of the reasons outlined in this subsection (2).

SOURCES: Laws, 2010, ch. 563, § 3, eff from and after passage (approved May 24, 2010.)

UNIFORM HEALTH-CARE DECISIONS ACT

§ 41-41-201. Short title.

Cross References — Applicability of this chapter to offender provided forms necessary to execute advance health-care directive by Department of Corrections, see § 47-5-180.

JUDICIAL DECISIONS

1. Arbitration.

Daughter had the capacity to bind her parent to arbitration as part of a nursing home application process, while acting as the parent's healthcare surrogate under the Uniform Health-Care Decisions Act, Miss. Code Ann. §§ 41-41-201 through 41-41-229. *Covenant Health & Rehab. of Picayune v. Lumpkin*, 23 So. 3d 1092 (Miss. Ct. App. 2008).

Healthcare surrogate, acting under the provisions of the Uniform Health-Care Decisions Act, Miss. Code Ann. §§ 41-41-201 through 41-41-229, is capable of binding his or her patient to arbitration. *Covenant Health & Rehab. of Picayune v. Lumpkin*, 23 So. 3d 1092 (Miss. Ct. App. 2008).

§ 41-41-205. Individual instructions; power of attorney; decisions by primary physician; agents; guardians; validity.

JUDICIAL DECISIONS

1. Validity.

Denial of a care center's motion to compel arbitration in a wrongful-death action brought against it was appropriate because there was no submission of a statement of the decedent's primary physician stating that he lacked capacity, Miss. Code Ann. § 41-41-205(5)-(6). Thus, his

power of attorney for healthcare was never effectuated and the care center's argument that the decedent's sister had actual authority to act under the power of attorney failed. *Monticello Cmty. Care Ctr., LLC v. Estate of Martin*, 17 So. 3d 172 (Miss. Ct. App. 2009).

§ 41-41-211. Surrogates.

JUDICIAL DECISIONS

1. Arbitration agreements.

3. Authority to bind.

1. Arbitration agreements.

Denial of a care center's motion to compel arbitration in a wrongful-death action brought against it was appropriate there was no corroborating evidence by a physician that the decedent lacked the capacity to make healthcare decisions for himself, Miss. Code Ann. § 41-41-211(1). Thus, his

sister could not make healthcare decisions for him as his healthcare surrogate. *Monticello Cmty. Care Ctr., LLC v. Estate of Martin*, 17 So. 3d 172 (Miss. Ct. App. 2009).

3. Authority to bind.

In an action for damages against a nursing home, the trial court properly denied the nursing home's motion to compel arbitration because neither of the resident's

sons, who had signed the admission paperwork containing the arbitration clause, had authority to bind the resident where neither had authority act as a surrogate on behalf of the resident under Miss. Code Ann. § 41-41-211, and there was no evidence that a primary physician had found the resident to be incapacitated. *Adams Cmty. Care Ctr., LLC v. Reed*, 37 So. 3d 1155 (Miss. 2010).

CHAPTER 43

Cemeteries and Burial Grounds

Cemetery Law	41-43-31
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CEMETERY LAW

- SEC.
- 41-43-37. Operation as perpetual care cemetery; establishment of irrevocable perpetual care trust fund; registration system for perpetual care cemeteries.
- 41-43-38. Operation as perpetual care cemetery; accounting and reporting requirements; penalties for failure to timely file requisite accountings, records, reports or notices; sale or transfer of perpetual care cemetery; audits; procedure if perpetual care cemetery becomes subject of court ordered receivership.

§ 41-43-37. Operation as perpetual care cemetery; establishment of irrevocable perpetual care trust fund; registration system for perpetual care cemeteries.

(1) The owner of every cemetery, subject to the provisions of Section 41-43-31 et seq., that is organized, begins or continues to do business in the State of Mississippi after July 1, 2009, shall provide for the creation and establishment of an irrevocable perpetual care trust fund, the principal of which shall permanently remain intact except as hereinafter provided and only the income thereof shall be devoted to the perpetual care of the cemetery. The perpetual care trust fund shall not be subject to the claims of the cemetery’s creditors and shall not be used as collateral, pledged, encumbered or placed at risk. This fund shall be created and established as follows:

- (a) In respect to a cemetery for earth burials, by the application and payment thereto of an amount equivalent to fifteen percent (15%) of the sale price, or Forty Cents (40¢) per square foot of ground interment rights sold, whichever is greater;
- (b) In respect to an above-ground community or public mausoleum, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or Fifty Dollars (\$50.00) per crypt sold, whichever is greater;
- (c) In respect to the placement of an above-ground, free-standing or private mausoleum, by the application and payment thereof of an amount equivalent to fifteen percent (15%) of the sale price for the ground interment right upon which the private mausoleum is installed and five percent (5%) of

the sales price as determined by the customer's invoice for the purchase price of the private mausoleum; and

(d) In respect to a community columbarium, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or Ten Dollars (\$10.00) per niche sold, whichever is greater.

For any sale of a lot for an earth burial, mausoleum crypt or columbarium niche in which payment is made by the purchaser on an installment basis over time, the percentage required to be trusted shall be paid into the perpetual care trust fund calculated on each payment.

(2) From the sale price the owner shall pay to the perpetual care fund an amount in proportion to the requirements in subsection (1) of this section, which payment shall be in cash, check, money order or electronic transfer and shall be deposited with the custodian or trustee of the fund not later than the fifth day of the following month from when funds are received.

(3) If the perpetual care trust fund principal is Fifty Thousand Dollars (\$50,000.00) or less, a perpetual care cemetery may maintain certificates of deposit that mature every thirty (30) days issued by an institution whose deposits are insured by the Federal Deposit Insurance Corporation. Certificates of deposits held by a cemetery for perpetual care under this subsection shall renew automatically with all earned interest added to principal for each successive renewal. Collections owed to trust from sales under subsection (1) of this section shall be added upon the next maturity date of the certificate rather than the fifth day of the following month as required by subsection (2) of this section. Certificates of deposit meeting the requirements of this subsection shall contain the words, "For Perpetual Care," in the caption of the certificate. Each perpetual care cemetery electing to maintain certificates of deposit under this subsection shall file documentation from the issuer with the Office of the Secretary of State with the submission of the annual report. Once the perpetual care principal from the cemetery's operations exceeds Fifty Thousand Dollars (\$50,000.00), such funds shall be held in an irrevocable trust managed by a trustee and governed by a trust instrument.

(4) In addition to the provisions of subsections (1) and (2) of this section, any cemetery organized after July 1, 2009, or any mausoleum or columbarium that is built at any location other than upon property owned by an existing cemetery after that date, whether it is by incorporation, association, individually or by any other means, or having its first burial after that date, shall, before disposing of any burial lot or right or making any sale thereof and/or making its first burial, cause to be deposited the sum of Twenty-five Thousand Dollars (\$25,000.00) in cash into an irrevocable perpetual care trust fund as provided in subsection (1) of this section for the maintenance of the cemetery.

(5) Whenever the cemetery has deposited in the perpetual care fund, as required by this section, a sum amounting to Fifty Thousand Dollars (\$50,000.00), it shall submit proof of that fact to its trustee, and it shall be the duty of the trustee to thereupon pay over to the cemetery the amount of Twenty-five Thousand Dollars (\$25,000.00) so originally deposited by it in the perpetual care fund.

(6) The perpetual care fund shall be permanently set aside in trust to be administered under the jurisdiction of the Secretary of State. The Secretary of State shall have full jurisdiction over the reports and accounting of trustees and the amount of a surety bond required, if any. The trust officer or trustee responsible for the investment of funds shall be affiliated with an established bank, trust company, other financial institution or financial services company. Only the income from the fund shall be used for the care and maintenance of the cemetery for which it was established.

(7) Each geographic location of a cemetery shall constitute a separate and distinct cemetery for the purpose of interpretation and application of this section.

(8) The Secretary of State shall develop and implement a registration system for perpetual care cemeteries subject to this chapter. The Secretary of State is authorized to promulgate rules and regulations for the development and implementation of a statewide registry and to collect a registration fee not to exceed Twenty-five Dollars (\$25.00) per year to be paid at the same time as the reports and accountings required by Section 41-43-38 are due.

(9) To assist with the development of a statewide registry of perpetual care cemeteries, the county boards of supervisors in conjunction with the chancery clerks shall provide the Secretary of State with a list of all perpetual care cemeteries and other pertinent information regarding perpetual care cemeteries situated in their respective counties no later than October 31, 2009.

SOURCES: Codes, 1942, § 5308-04; Laws, 1958, ch. 481, § 4; Laws, 1966, ch. 375, § 1; Laws, 1982, ch. 371, § 1; Laws, 2009, ch. 549, § 19; Laws, 2012, ch. 565, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added (1)(c) and (3).

§ 41-43-38. Operation as perpetual care cemetery; accounting and reporting requirements; penalties for failure to timely file requisite accountings, records, reports or notices; sale or transfer of perpetual care cemetery; audits; procedure if perpetual care cemetery becomes subject of court ordered receivership.

(1) The provisions of this section shall apply to every cemetery that is required to establish and maintain a perpetual care trust fund as provided in Section 41-43-37.

(2) By March 31 of each year, each perpetual care cemetery not exempt by Section 41-43-33 shall file with the Secretary of State the following information:

(a) The name of the cemetery, the date of incorporation, if incorporated, and the location of the cemetery or cemeteries owned;

(b) The amounts of sales of cemetery lots, grave spaces, mausoleum crypts or columbarium niches for which payment has been made in full or

deeds of conveyance or perpetual easements issued thereon during the preceding calendar year;

(c) The amounts paid into the perpetual care fund, and the income earned therefrom during the preceding calendar year;

(d) The number of acres embraced within each cemetery and held by the cemetery for cemetery purposes; and

(e) The names and addresses of the owners of the cemetery or the officers and directors of the corporation and any change of control that occurred during the preceding calendar year.

(3) The custodian or trustee of the perpetual care fund of each cemetery shall annually prepare and file with the Secretary of State a detailed accounting and report of the fund on or before March 31 of each year for the preceding calendar year. The accounting and report shall contain a properly itemized description of the securities in which the monies of the perpetual care fund are invested, the fund value, and any changes in the investment portfolio from the prior year's report. The accounting and report shall be at all times available to inspection and copy by any owner of a burial right in the cemetery, or the family, legal representative or next of kin of the owner, at the usual place for transacting the regular business of the cemetery.

For each day that the report and accounting required by subsections (2) and (3) of this section are late, the Secretary of State is authorized to charge a late fee of Ten Dollars (\$10.00) per day.

(4) As a condition to the transfer of any perpetual care trust fund monies from one (1) trustee or trust institution to another, the cemetery for which the fund is maintained shall, not less than thirty (30) days before the time when the transfer is to occur, file with the Secretary of State a written notice of intent to transfer accompanied with a letter of intent to receive the trust fund monies from the trustee or trust institution to which the trust fund monies are to be transferred. The fund monies shall be transferred directly from the existing custodian or trustee to the receiving custodian or trustee only after approval has been issued in writing by the Secretary of State or his representative.

(5) Before any sale or transfer of a perpetual care cemetery or a controlling interest therein, an independent audit of the perpetual care trust fund shall be performed at the expense of the seller and/or buyer or transferor and transferee and filed with the Secretary of State. The audit shall be current within thirty (30) days of the proposed sale or transfer. No sale or transfer of any perpetual care cemetery shall occur until approved in writing by the Secretary of State or his representative.

(6) The Secretary of State shall, upon the failure to timely receive any of the records, reports or notices provided for in this section, immediately give notice by certified letter or hand delivery to the last known cemetery owner or owners, or, if incorporated, its officers and directors, at its or their last known address, that those records, reports or notices have not been received. Failure of those persons to file the records, reports or notices within fifteen (15) days after receipt of the certified letter or hand delivery shall, in the absence of clear justification or excuse, constitute a misdemeanor and each owner of the

cemetery and, if incorporated, its officers and directors, shall be subject to the penalties provided for in Section 41-43-53.

(7) Whenever it reasonably appears to the Secretary of State, any owner or purchaser, or the family, legal representative or next of kin of any such owner or purchaser, of any lot, plot, grave, crypt, niche or burial space within a perpetual care cemetery, that (a) the cemetery is insolvent or about to become insolvent; or (b) no perpetual care trust fund has been established for the cemetery or, if established, the trust fund does not contain the funds as are required to be contained therein, that party may bring an action in the chancery court in the county in which the cemetery is located. Upon a proper showing, the court shall order a private audit and examination of any perpetual care trust fund of the cemetery and of all the books, records and papers employed in the transaction of the cemetery business.

If the audit and examination show that the cemetery is insolvent or is about to become insolvent, or that a sufficient trust fund is not established or being maintained for the cemetery, the court shall exercise any jurisdiction and make and issue any orders and decrees as may be necessary to correct and enforce compliance with the provisions of Section 41-43-31 et seq. and all such other orders and decrees as shall be just, equitable and in the public interest, including the appointment of receivers to continue or terminate the operation of the business.

(8) All the necessary expenses of any examination or audit performed or court proceedings conducted under the provisions of subsection (7) of this section shall be paid by the cemetery owner or owners or, if incorporated, its officers and directors, and if a sale of any cemetery is ordered by the court, the proceeds of the sale shall first be applied to the costs expended under the provisions of subsection (7) of this section.

(9) Whenever a cemetery subject to the provisions of Section 41-43-31 et seq. becomes the subject of a court order of receivership, the receiver shall determine as soon as practical if the income of the receivership estate is sufficient for the operation of the cemetery including the upkeep and maintenance of cemetery grounds. If the receiver determines that insufficient cash flow or income exists to provide maintenance and upkeep, the receiver shall notify the mayor of the municipality in which the cemetery is located or the president of the board of supervisors for cemeteries located outside of a municipality, by certified mail return receipt requested, that insufficient income exists for the receivership estate. Upon receipt of that notice, the municipality or county shall appoint a cemetery maintenance committee of no more than seven (7) persons who have an interest in the cemetery through ownership of interment or entombment rights, genealogical or historical reasons. The committee may solicit donations and raise funds by any lawful means from private citizens and private sources. The committee may establish a trust fund to supply continuing needs over a long period of time. However, the receiver shall have the authority to determine the maintenance and upkeep to be performed, the frequency of upkeep and the selection of workers or contractors to accomplish maintenance and upkeep. If, at the conclusion of

the receivership estate, excess funds are on deposit with the maintenance committee, the receiver is authorized to apply excess funds to any short-term or long-term capital improvement by which the cemetery would benefit.

SOURCES: Laws, 1982, ch. 371, § 2; Laws, 2009, ch. 549, § 20; Laws, 2011, ch. 362, § 1, eff from and after July 1, 2011.

Joint Legislative Committee Note — In 2009, an error in a statutory reference in subsection (8) was corrected at the direction of co-counsel of the Joint Legislative Committee on Compilation, Revision and Publication by substituting "...subsection (7) of this section..." for "...subsection (8) of this section..." both times it appears. The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

Amendment Notes — The 2011 amendment added (9).

CHAPTER 55

Public Ambulance Service

PUBLIC AMBULANCE SERVICES BY GOVERNMENTAL ENTITIES

§ 41-55-7. Effect of existence of adequate private ambulance service; public subsidies.

JUDICIAL DECISIONS

1. In general.

County board of supervisors did not violate the preference for contracting with private ambulance services under Miss. Code Ann. § 41-55-7 when it entered into a contract with a public company after a private ambulance service informed the

board it was terminating its services to the county. *Stone County v. Stone County Hosp. Ambulance Serv.*, 64 So. 3d 507 (Miss. Ct. App. 2010), writ of certiorari denied by 63 So. 3d 1229, 2011 Miss. LEXIS 328 (Miss. 2011).

CHAPTER 57

Vital Statistics

Births and Deaths 41-57-3

BIRTHS AND DEATHS

SEC.
41-57-23. Proceedings to correct birth certificate containing major deficiencies.

§ 41-57-23. Proceedings to correct birth certificate containing major deficiencies.

(1) Any petition, bill of complaint or other proceeding filed in the chancery court to: (a) change the date of birth by two (2) or more days, (b) change the surname of a child, (c) change the surname of either or both parents, (d) change

the birthplace of the child because of an error or omission of such information as originally recorded or (e) make any changes or additions to a birth certificate resulting from a legitimation, filiation or any changes not specifically authorized elsewhere by statute, shall be filed in the county of residence of the petitioner or filed in any chancery court district of the state if the petitioner be a nonresident petitioner. In all such proceedings, the State Board of Health shall be made a respondent therein, and a certified copy of the petition, bill of complaint or other proceeding shall be forwarded to the State Board of Health. Process may be served upon the State Registrar of Vital Records. The State Board of Health shall file an answer to all such proceedings within the time as provided by general law. The provisions of this section shall not apply to adoption proceedings. Upon receipt of a certified copy of a decree, which authorizes and directs the State Board of Health to alter the certificate, it shall comply with all of the provisions of such decree.

(2) If a child is born to a mother who was not married at the time of conception or birth, or at any time between conception and birth, and the natural father acknowledges paternity, the name of the father shall be added to the birth certificate if a notarized affidavit by both parents acknowledging paternity is received on the form prescribed or as provided in Section 93-9-9. The surname of the child shall be that of the father except that an affidavit filed at birth by both listed mother and father may alter this rule. In the event the mother was married at the time of conception or birth, or at any time between conception and birth, or if a father is already listed on the birth certificate, action must be taken under Section 41-57-23(1) to add or change the name of the father.

(3)(a) A signed voluntary acknowledgment of paternity is subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(i) One (1) year; or

(ii) The date of a judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

(b) After the expiration of the one-year period specified in subsection (3)(a)(i) of this section, a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger; the legal responsibilities, including child support obligations, of any signatory arising from the acknowledgment may not be suspended during the pendency of the challenge, except for good cause shown.

SOURCES: Codes, Hemingway's 1917, § 4868; 1930, § 4904; 1942, § 7060; Laws, 1912, ch. 149; Laws, 1938, ch. 269; Laws, 1942, ch. 307; Laws, 1944, ch. 309, § 1; Laws, 1962, ch. 400; Laws, 1968, ch. 372, § 1; Laws, 1971, ch. 406, § 1; Laws, 1978, ch. 375, § 2; Laws, 1983, ch. 522, § 34; Laws, 1989, ch. 511, § 3; Laws, 1994, ch. 544, § 3; Laws, 1994, ch. 614, § 1; Laws, 1999, ch. 512, § 9; Laws, 2012, ch. 387, § 1, eff from and after passage (approved Apr. 18, 2012.)

Amendment Notes — The 2012 amendment substituted “One (1) year” for “Sixty (60) days” in (3)(a)(i); and substituted “one-year” for “sixty-day” in (3)(b).

CHAPTER 58

Medical Radiation Technology

SEC.

- 41-58-1. Definitions [Repealed effective July 1, 2013].
- 41-58-3. Adoption, etc., of rules and regulations; requirements for operation of medical radiation technology machines; maintenance of records by facilities; continuing education requirements for operators; registration requirements [Repealed effective July 1, 2013].^a
- 41-58-5. Continuing education requirements; completion; fees [Repealed effective July 1, 2013].

§ 41-58-1. Definitions [Repealed effective July 1, 2013].

As used in this chapter:

- (a) "Department" means the Mississippi State Department of Health.
- (b) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, chiropractic, osteopathy or podiatry, or a licensed nurse practitioner or physician assistant.
- (c) "Ionizing radiation" means x-rays and gamma rays, alpha and beta particles, high speed electrons, neutrons and other nuclear particles.
- (d) "X-radiation" means penetrating electromagnetic radiation with wavelengths shorter than ten (10) nanometers produced by bombarding a metallic target with fast electrons in a vacuum.
- (e) "Supervision" means responsibility for, and control of, quality radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.
- (f) "Medical radiation technology" means the science and art of applying ionizing radiation to human beings for diagnostic and/or therapeutic purposes. The four (4) specialized disciplines of medical radiation technology are diagnostic radiologic technology, nuclear medicine technology, radiation therapy and limited x-ray machine operator.
- (g) "Radiologic technologist" means a person other than a licensed practitioner who has passed a national certification examination recognized by the department such as the American Registry of Radiologic Technologists examination or its equivalent, who applies x-radiation or ionizing radiation to any part of the human body for diagnostic purposes and includes the administration of parenteral and enteral contrast media and administration of other medications or procedures incidental to radiologic examinations.
- (h) "Nuclear medicine technologist" means a person other than a licensed practitioner who has passed a national certification examination recognized by the department such as the American Registry of Radiologic Technologists examination or the Nuclear Medicine Technology Certification Board examination or its equivalent, who performs in vivo imaging and measurement procedures and in vitro nonimaging laboratory studies, pre-

pares radiopharmaceuticals, and administers diagnostic/therapeutic doses of radiopharmaceuticals to human beings while under the supervision of a licensed practitioner who is licensed to possess and use radioactive material.

(i) "Radiation therapist" means a person other than a licensed practitioner who has passed a national certification examination recognized by the department such as the American Registry of Radiologic Technologists examination or its equivalent, who applies x-radiation and the ionizing radiation emitted from particle accelerators, cobalt sixty (60) units and sealed sources of radioactive material to human beings for therapeutic purposes while under the supervision of a licensed radiation oncologist or a board certified radiologist who is licensed to possess and use radioactive material.

(j) "Limited x-ray machine operator" means a person other than a licensed practitioner or radiologic technologist who is issued a permit by the State Board of Medical Licensure to perform medical radiation technology limited to specific radiographic procedures on certain parts of the human anatomy, specifically the chest, abdomen and skeletal structures, and excluding fluoroscopic and contrast studies, computed tomography, nuclear medicine, radiation therapy studies and mammography.

(k) "Council" means the Medical Radiation Advisory Council created under Section 41-58-3.

This section shall stand repealed on July 1, 2013.

SOURCES: Laws, 1995, ch. 388, § 1; Laws, 1996, ch. 546, § 1; Laws, 2000, ch. 333, § 1; Laws, 2006, ch. 324, § 1; Laws, 2010, ch. 478, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (b), inserted "or physician assistant"; in the last sentence in (f), substituted "four (4) specialized disciplines" for "three (3) specialized disciplines" and added "and limited x-ray machine operator"; in (g) through (i), inserted "recognized by the department"; in (g), added the language beginning "and includes the administration of parenteral and enteral contrast media" through to the end; added (j), redesignated former (j) as (k), and therein made a minor stylistic change; and in the last paragraph, extended the date of the repealer for the section by substituting "July 1, 2013" for "July 1, 2010."

§ 41-58-3. Adoption, etc., of rules and regulations; requirements for operation of medical radiation technology machines; maintenance of records by facilities; continuing education requirements for operators; registration requirements [Repealed effective July 1, 2013].

(1) The department shall have full authority to adopt such rules and regulations not inconsistent with the laws of this state as may be necessary to effectuate the provisions of this chapter, and may amend or repeal the same as may be necessary for such purposes.

(2) There shall be established a Medical Radiation Advisory Council to be appointed as provided in this section. The council shall consist of ten (10) members as follows:

- (a) One (1) radiologist who is an active practitioner and member of the Mississippi Radiological Society;
- (b) One (1) licensed family physician;
- (c) One (1) licensed practitioner;
- (d) Two (2) registered radiologic technologists;
- (e) One (1) nuclear medicine technologist;
- (f) One (1) radiation therapist;
- (g) One (1) limited x-ray machine operator;
- (h) One (1) radiation physicist;
- (i) One (1) hospital administrator; and
- (j) The State Health Officer, or his designee, who shall serve as ex officio chairman with no voting authority.

(3) The department shall, following the recommendations from the appropriate professional state societies and organizations, including the Mississippi Radiological Society, the Mississippi Society of Radiologic Technologists, and the Mississippi State Nuclear Medicine Society, and other nominations that may be received from whatever source, appoint the members of the council as soon as possible after the effective date of subsections (2) and (3) of this section. Any person serving on the council who is a practitioner of a profession or occupation required to be licensed, credentialed or certified in the state shall be a holder of an appropriate license, credential or certificate issued by the state. All members of the council shall be residents of the State of Mississippi. The council shall promulgate such rules and regulations by which it shall conduct its business. Members of the council shall receive no salary for services performed on the council but may be reimbursed for their reasonable and necessary actual expenses incurred in the performance of the same, from funds provided for such purpose. The council shall assist and advise the department in the development of regulations and standards to effectuate the provisions of this chapter.

(4) A radiologic technologist, nuclear medicine technologist or radiation therapist shall not apply ionizing or x-radiation or administer radiopharmaceuticals to a human being or otherwise engage in the practice of medical radiation technology unless the person possesses a valid registration issued by the department under the provisions of this chapter.

(5) The department may issue a temporary registration to practice a specialty of medical radiation technology to any applicant who has completed an approved program, who has complied with the provisions of this chapter, and is awaiting examination for that specialty. This registration shall convey the same rights as the registration for which the applicant is awaiting examination and shall be valid for one (1) six-month period.

(6) The department may charge a registration fee of not more than Fifty Dollars (\$50.00) biennially to each person to whom it issues a registration under the provisions of this chapter.

(7) Registration with the department is not required for:

(a) A student enrolled in and participating in an accredited course of study approved by the department for diagnostic radiologic technology, nuclear medicine technology or radiation therapy, who as a part of his clinical course of study applies ionizing radiation to a human being while under the supervision of a licensed practitioner, registered radiologic technologist, registered nuclear medicine technologist or registered radiation therapist;

(b) Laboratory personnel who use radiopharmaceuticals for in vitro studies;

(c) A dental hygienist or a dental assistant who is not a radiologic technologist, nuclear medicine technologist or radiation therapist, who possesses a radiology permit issued by the Board of Dental Examiners and applies ionizing radiation under the specific direction of a licensed dentist;

(d) A chiropractic assistant who is not a radiologic technologist, nuclear medicine technologist or radiation therapist, who possesses a radiology permit issued by the Board of Chiropractic Examiners and applies ionizing radiation under the specific direction of a licensed chiropractor;

(e) An individual who is permitted as a limited x-ray machine operator by the State Board of Medical Licensure and applies ionizing radiation in a physician's office, radiology clinic or a licensed hospital in Mississippi under the specific direction of a licensed practitioner; and

(f) A student enrolled in and participating in an accredited course of study for diagnostic radiologic technology, nuclear medicine technology or radiation therapy and is employed by a physician's office, radiology clinic or a licensed hospital in Mississippi and applies ionizing radiation under the specific direction of a licensed practitioner.

(8) Nothing in this chapter is intended to limit, preclude, or otherwise interfere with the practices of a licensed practitioner who is duly licensed or registered by the appropriate agency of the State of Mississippi, provided that the agency specifically recognizes that the procedures covered by this chapter are within the scope of practice of the licensee or registrant.

(9)(a) If any radiologic technologist, nuclear medicine technologist or radiation therapist violates any provision of this chapter or the regulations adopted by the department, the department shall suspend or revoke the registration and practice privileges of the person or issue other disciplinary actions in accordance with statutory procedures and rules and regulations of the department.

(b) If any person violates any provision of this chapter, the department shall issue a written warning to the licensed practitioner or medical institution that employs the person; and if that person violates any provision of this chapter again within three (3) years after the first violation, the department may suspend or revoke the permit or registration for the x-radiation and ionizing equipment of the licensed practitioner or medical institution that employs the person, in accordance with statutory procedures and rules and regulations of the department regarding suspension and revocation of those permits or registrations.

(10) This section shall stand repealed on July 1, 2013.

SOURCES: Laws, 1995, ch. 388, § 2; Laws, 1996, ch. 546, § 2; Laws, 2000, ch. 333, § 2; Laws, 2006, ch. 324, § 2; Laws, 2010, ch. 478, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (2)(g), substituted “limited x-ray machine operator” for “limited radiologic technician”; in (6), substituted “Fifty Dollars (\$50.00) biennially” for “Twenty-five Dollars (\$25.00) annually”; in the introductory language in (7), inserted “with the department”; in (7)(a), substituted “in an accredited course of study approved by the department” for “in an approved course of study”; rewrote (7)(e) and (7)(f); in (9)(a), inserted “or the regulations adopted by the department” and “or issue other disciplinary action”; in (9)(b), deleted “radiation” following “x-radiation and ionizing” and made a minor stylistic change; and in (10), extended the date of the repealer for the section by substituting “July 1, 2013” for “July 1, 2010.”

§ 41-58-5. Continuing education requirements; completion; fees [Repealed effective July 1, 2013].

(1) Each registered radiologic technologist, registered nuclear medicine technologist and registered radiation therapist shall submit evidence to the department of completing twenty-four (24) hours of continuing education in a two-year period as described in the rules and regulations of the department.

(2) Each limited x-ray machine operator who is first employed to apply ionizing radiation in the State of Mississippi shall complete twelve (12) hours of education in radiologic technology, with six (6) of those hours specifically in radiation protection, not later than twelve (12) months after the date of his or her employment to apply ionizing radiation, and shall thereafter submit evidence to the department of completing twelve (12) hours of continuing education in a two-year period as described in the rules and regulations of the department. Six (6) of the continuing education hours must be in radiation protection.

(3) Each individual who is exempt from registration under paragraph (d) of Section 41-58-3(7) shall complete twelve (12) hours of continuing education in a two-year period as described in the rules and regulations of the department. Six (6) of the continuing education hours must be in radiation protection.

(4) Each individual who is exempt from registration under paragraph (d) of Section 41-58-3(7) and who is first employed to apply ionizing radiation in the State of Mississippi shall complete twelve (12) hours of education in radiologic technology, with six (6) of those hours specifically in radiation protection, not later than twelve (12) months after the date of his or her employment to apply ionizing radiation.

(5) The department shall approve training sessions that will provide the continuing education required under this section in each of the junior/community college districts in the state, with at least one (1) training session being held during each quarter of the year.

(6)(a) The Board of Dental Examiners shall annually provide the department with a list certifying those dental hygienists and dental assistants who are exempt from registration under paragraph (c) of Section 41-58-3(7).

(b) The Board of Chiropractic Examiners shall provide the department with a list certifying those chiropractic assistants who are exempt from registration under paragraph (d) of Section 41-58-3(7) who have completed the continuing education requirements of this section.

(c) The State Board of Medical Licensure shall provide the department with a list of limited x-ray machine operators who are exempt from registration under paragraph (e) of Section 41-58-3(7).

(d) The Board of Chiropractic Examiners and the State Board of Medical Licensure may charge a fee of not more than Fifty Dollars (\$50.00) biennially to each individual whom the board certifies as having completed the continuing education requirements of this section.

(7) This section shall stand repealed on July 1, 2013.

SOURCES: Laws, 1996, ch. 546, § 3; Laws, 1997, ch. 541, § 36; Laws, 2000, ch. 333, § 3; Laws, 2006, ch. 324, § 3; Laws, 2010, ch. 478, § 3, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote the section.

CHAPTER 59

Emergency Medical Services

SEC.

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| 41-59-3. | Definitions. |
| 41-59-5. | Establishment and administration of program. |
| 41-59-7. | Advisory council. |

§ 41-59-3. Definitions.

As used in this chapter, unless the context otherwise requires, the term:

(a) “Ambulance” means any privately or publicly owned land or air vehicle that is especially designed, constructed, modified or equipped to be used, maintained and operated upon the streets, highways or airways of this state to assist persons who are sick, injured, wounded, or otherwise incapacitated or helpless;

(b) “Permit” means an authorization issued for an ambulance vehicle and/or a special use EMS vehicle as meeting the standards adopted under this chapter;

(c) “License” means an authorization to any person, firm, corporation, or governmental division or agency to provide ambulance services in the State of Mississippi;

(d) “Emergency medical technician” means an individual who possesses a valid emergency medical technician’s certificate issued under the provisions of this chapter;

(e) “Certificate” means official acknowledgment that an individual has successfully completed (i) the recommended basic emergency medical technician training course referred to in this chapter which entitles that

individual to perform the functions and duties of an emergency medical technician, or (ii) the recommended medical first responder training course referred to in this chapter which entitles that individual to perform the functions and duties of a medical first responder;

(f) "Board" means the State Board of Health;

(g) "Department" means the State Department of Health, Division of Emergency Medical Services;

(h) "Executive officer" means the Executive Officer of the State Board of Health, or his designated representative;

(i) "First responder" means a person who uses a limited amount of equipment to perform the initial assessment of and intervention with sick, wounded or otherwise incapacitated persons;

(j) "Medical first responder" means a person who uses a limited amount of equipment to perform the initial assessment of and intervention with sick, wounded or otherwise incapacitated persons who (i) is trained to assist other EMS personnel by successfully completing, and remaining current in refresher training in accordance with, an approved "First Responder: National Standard Curriculum" training program, as developed and promulgated by the United States Department of Transportation; (ii) is nationally registered as a first responder by the National Registry of Emergency Medical Technicians; and (iii) is certified as a medical first responder by the State Department of Health, Division of Emergency Medical Services;

(k) "Invalid vehicle" means any privately or publicly owned land or air vehicle that is maintained, operated and used only to transport persons routinely who are convalescent or otherwise nonambulatory and do not require the service of an emergency medical technician while in transit;

(l) "Special use EMS vehicle" means any privately or publicly owned land, water or air emergency vehicle used to support the provision of emergency medical services. These vehicles shall not be used routinely to transport patients;

(m) "Trauma care system" or "trauma system" means a formally organized arrangement of health care resources that has been designated by the department by which major trauma victims are triaged, transported to and treated at trauma care facilities;

(n) "Trauma care facility" or "trauma center" means a hospital located in the State of Mississippi or a Level I trauma care facility or center located in a state contiguous to the State of Mississippi that has been designated by the department to perform specified trauma care services within a trauma care system pursuant to standards adopted by the department;

(o) "Trauma registry" means a collection of data on patients who receive hospital care for certain types of injuries. Such data are primarily designed to ensure quality trauma care and outcomes in individual institutions and trauma systems, but have the secondary purpose of providing useful data for the surveillance of injury morbidity and mortality;

(p) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain,

psychiatric disturbances and/or symptoms of substance abuse, such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part;

(q) “Emergency medical call” means a situation that is presumptively classified at time of dispatch to have a high index of probability that an emergency medical condition or other situation exists that requires medical intervention as soon as possible to reduce the seriousness of the situation, or when the exact circumstances are unknown, but the nature of the request is suggestive of a true emergency where a patient may be at risk;

(r) “Emergency response” means responding immediately at the basic life support or advanced life support level of service to an emergency medical call. An immediate response is one in which the ambulance supplier begins as quickly as possible to take the steps necessary to respond to the call;

(s) “Emergency mode” means an ambulance or special use EMS vehicle operating with emergency lights and warning siren (or warning siren and air horn) while engaged in an emergency medical call.

SOURCES: Laws, 1974, ch. 507, § 2; Laws, 1991, ch. 482, § 1; Laws, 1998, ch. 429, § 1; Laws, 2000, ch. 594, § 1; Laws, 2002, ch. 623, § 1; brought forward without change, Laws, 2002, 1st Ex Sess, ch. 3, § 1; Laws, 2004, ch. 425, § 1; Laws, 2004, ch. 581, § 1; Laws, 2008, ch. 549, § 1; reenacted and amended, Laws, 2011, ch. 545, § 2, eff from and after July 1, 2011.

Editor’s Note — Laws of 2011, ch. 545, § 8, effective July 1, 2011, amended Laws of 2008, ch. 549, § 9, to extend the date of the repealer for this section from July 1, 2011, until July 1, 2014. Subsequently, Laws of 2011, ch. 531, § 2, effective July 2, 2011, repealed Laws of 2008, ch. 549, § 9, to delete the repealer for this section.

Amendment Notes — The 2011 amendment reenacted and amended the section by making a minor stylistic change.

§ 41-59-5. Establishment and administration of program.

(1) The State Board of Health shall establish and maintain a program for the improvement and regulation of emergency medical services (hereinafter EMS) in the State of Mississippi. The responsibility for implementation and conduct of this program shall be vested in the State Health Officer of the State Board of Health along with such other officers and boards as may be specified by law or regulation.

(2) The board shall provide for the regulation and licensing of public and private ambulance service, inspection and issuance of permits for ambulance vehicles, training and certification of EMS personnel, including drivers and attendants, the development and maintenance of a statewide EMS records program, development and adoption of EMS regulations, the coordination of an EMS communications system, and other related EMS activities.

(3) The board is authorized to promulgate and enforce such rules, regulations and minimum standards as needed to carry out the provisions of this chapter.

(4) The board is authorized to receive any funds appropriated to the board from the Emergency Medical Services Operating Fund created in Section 41-59-61 and is further authorized, with the Emergency Medical Services Advisory Council acting in an advisory capacity, to administer the disbursement of such funds to the counties, municipalities and organized emergency medical service districts and the utilization of such funds by the same, as provided in Section 41-59-61.

(5) The department acting as the lead agency, in consultation with and having solicited advice from the EMS Advisory Council, shall develop a uniform nonfragmented inclusive statewide trauma care system that provides excellent patient care. It is the intent of the Legislature that the purpose of this system is to reduce death and disability resulting from traumatic injury, and in order to accomplish this goal it is necessary to assign additional responsibilities to the department. The department is assigned the responsibility for creating, implementing and managing the statewide trauma care system. The department shall be designated as the lead agency for trauma care systems development. The department shall develop and administer trauma regulations that include, but are not limited to, the Mississippi Trauma Care System Plan, trauma system standards, trauma center designations, field triage, interfacility trauma transfer, EMS aero medical transportation, trauma data collection, trauma care system evaluation and management of state trauma systems funding. The department shall promulgate regulations specifying the methods and procedures by which Mississippi-licensed acute care facilities shall participate in the statewide trauma system. Those regulations shall include mechanisms for determining the appropriate level of participation for each facility or class of facilities. The department shall also adopt a schedule of fees to be assessed for facilities that choose not to participate in the statewide trauma care system, or which participate at a level lower than the level at which they are capable of participating. The fees paid under this provision shall be for the exclusive benefit of the statewide trauma care system and shall not lapse into the State General Fund. The department shall promulgate rules and regulations necessary to effectuate this provision by September 1, 2008, with an implementation date of September 1, 2008. The department shall take the necessary steps to develop, adopt and implement the Mississippi Trauma Care System Plan and all associated trauma care system regulations necessary to implement the Mississippi trauma care system. The department shall cause the implementation of both professional and lay trauma education programs. These trauma educational programs shall include both clinical trauma education and injury prevention. As it is recognized that rehabilitation services are essential for traumatized individuals to be returned to active, productive lives, the department shall coordinate the development of the inclusive trauma system with the Mississippi Department of Rehabilitation Services and all other appropriate rehabilitation systems.

(6) The State Board of Health is authorized to receive any funds appropriated to the board from the Mississippi Trauma Care System Fund created in Section 41-59-75. It is further authorized, with the Emergency Medical Services Advisory Council and the Mississippi Trauma Advisory Committee acting in advisory capacities, to administer the disbursements of those funds according to adopted trauma care system regulations. Any Level I trauma care facility or center located in a state contiguous to the State of Mississippi that participates in the Mississippi trauma care system and has been designated by the department to perform specified trauma care services within the trauma care system under standards adopted by the department shall receive a reasonable amount of reimbursement from the department for the cost of providing trauma care services to Mississippi residents whose treatment is uncompensated.

(7) In addition to the trauma-related duties provided for in this section, the Board of Health shall develop a plan for the delivery of services to Mississippi burn victims through the existing trauma care system of hospitals. Such plan shall be operational by July 1, 2005, and shall include:

(a) Systems by which burn patients will be assigned or transferred to hospitals capable of meeting their needs;

(b) Until the Mississippi Burn Center established at the University of Mississippi Medical Center under Section 37-115-45 is operational, procedures for allocating funds appropriated from the Mississippi Burn Care Fund to hospitals that provide services to Mississippi burn victims; and

(c) Such other provisions necessary to provide burn care for Mississippi residents, including reimbursement for travel, lodging, if no free lodging is available, meals and other reasonable travel-related expenses incurred by burn victims, family members and/or caregivers, as established by the State Board of Health through rules and regulations.

After the Mississippi Burn Center established at the University of Mississippi Medical Center under Section 37-115-45 is operational, the Board of Health shall revise the plan to include the Mississippi Burn Center.

SOURCES: Laws, 1974, ch. 507, § 3; Laws, 1982, ch. 344, § 2; Laws, 1989, ch. 545, § 1; Laws, 1991, ch. 597, § 1; Laws, 1992, ch. 491 § 27; Laws, 1998, ch. 429, § 2; Laws, 2005, 2nd Ex Sess, ch. 47, § 8; Laws, 2007, ch. 569, § 8; Laws, 2008, ch. 549, § 2; reenacted and amended, Laws, 2011, ch. 545, § 3, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 545, § 8, effective July 1, 2011, amended Laws of 2008, ch. 549, § 9, to extend the date of the repealer for this section from July 1, 2011, until July 1, 2014. Subsequently, Laws of 2011, ch. 531, § 2, effective July 2, 2011, repealed Laws of 2008, ch. 549, § 9, to delete the repealer for this section.

Amendment Notes — The 2011 amendment reenacted and amended the section by adding the seventh sentence in (5).

§ 41-59-7. Advisory council.

(1) There is created an emergency medical services advisory council to consist of the following members who shall be appointed by the Governor:

(a) One (1) licensed physician to be appointed from a list of nominees presented by the Mississippi Trauma Committee, American College of Surgeons;

(b) One (1) licensed physician to be appointed from a list of nominees who are actively engaged in rendering emergency medical services presented by the Mississippi State Medical Association;

(c) One (1) registered nurse whose employer renders emergency medical services, to be appointed from a list of nominees presented by the Mississippi Nurses Association;

(d) Two (2) hospital administrators who are employees of hospitals which provide emergency medical services, to be appointed from a list of nominees presented by the Mississippi Hospital Association;

(e) Two (2) operators of ambulance services;

(f) Three (3) officials of county or municipal government;

(g) One (1) licensed physician to be appointed from a list of nominees presented by the Mississippi Chapter of the American College of Emergency Physicians;

(h) One (1) representative from each designated trauma care region, to be appointed from a list of nominees submitted by each region;

(i) One (1) registered nurse to be appointed from a list of nominees submitted by the Mississippi Emergency Nurses Association;

(j) One (1) EMT-Paramedic whose employer renders emergency medical services in a designated trauma care region;

(k) One (1) representative from the Mississippi Department of Rehabilitation Services;

(l) One (1) member who shall be a person who has been a recipient of trauma care in Mississippi or who has an immediate family member who has been a recipient of trauma care in Mississippi;

(m) One (1) licensed neurosurgeon to be appointed from a list of nominees presented by the Mississippi State Medical Association;

(n) One (1) licensed physician with certification or experience in trauma care to be appointed from a list of nominees presented by the Mississippi Medical and Surgical Association;

(o) One (1) representative from the Mississippi Firefighters Memorial Burn Association, to be appointed by the association's governing body; and

(p) One (1) representative from the Mississippians for Emergency Medical Services, to be appointed by the association's governing body.

The terms of the advisory council members shall begin on July 1, 1974. Four (4) members shall be appointed for a term of two (2) years, three (3) members shall be appointed for a term of three (3) years, and three (3) members shall be appointed for a term of four (4) years. Thereafter, members shall be appointed for a term of four (4) years. The executive officer or his

designated representative shall serve as ex officio chairman of the advisory council. Advisory council members may hold over and shall continue to serve until a replacement is named by the Governor.

The advisory council shall meet at the call of the chairman at least annually. For attendance at such meetings, the members of the advisory council shall be reimbursed for their actual and necessary expenses including food, lodging and mileage as authorized by law, and they shall be paid per diem compensation authorized under Section 25-3-69.

The advisory council shall advise and make recommendations to the board regarding rules and regulations promulgated pursuant to this chapter.

(2) There is created a committee of the Emergency Medical Services Advisory Council to be named the Mississippi Trauma Advisory Committee (hereinafter "MTAC"). This committee shall act as the advisory body for trauma care system development and provide technical support to the department in all areas of trauma care system design, trauma standards, data collection and evaluation, continuous quality improvement, trauma care system funding, and evaluation of the trauma care system and trauma care programs. The membership of the Mississippi Trauma Advisory Committee shall be comprised of Emergency Medical Services Advisory Council members appointed by the chairman.

SOURCES: Laws, 1974, ch. 507, § 4; Laws, 1983, ch. 522, § 37; Laws, 1986, ch. 363; Laws, 1998, ch. 429, § 3; Laws, 2008, ch. 325, § 1; Laws, 2008, ch. 549, § 3, eff from and after July 1, 2008; reenacted and amended, Laws, 2011, ch. 545, § 4, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 545, § 8, effective July 1, 2011, amended Laws of 2008, ch. 549, § 9, to extend the date of the repealer for this section from July 1, 2011, until July 1, 2014. Subsequently, Laws of 2011, ch. 531, § 2, effective July 2, 2011, repealed Laws of 2008, ch. 549, § 9, to delete the repealer for this section.

Amendment Notes — The 2011 amendment reenacted and amended the section by adding (1)(p); and making minor stylistic changes.

§ 41-59-75. Mississippi Trauma Care Systems Fund established; Mississippi Trauma Care Escrow Fund created.

SOURCES: Laws, 1998, ch. 429, § 4; Laws, 2005, 2nd Ex Sess, ch. 1, § 2; Laws, 2005, 2nd Ex Sess, ch. 1, § 2; Laws, 2008, ch. 549, § 4; reenacted without change, Laws, 2011, ch. 545, § 5, eff from and after July 1, 2011.

Editor's Note — Laws of 2011, ch. 545, § 8, effective July 1, 2011, amended Laws of 2008, ch. 549, § 9, to extend the date of the repealer for this section from July 1, 2011, until July 1, 2014. Subsequently, Laws of 2011, ch. 531, § 2, effective July 2, 2011, repealed Laws of 2008, ch. 549, § 9, to delete the repealer for this section.

This section was reenacted without change by Laws of 2011, ch. 545, effective from and after July 1, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted this section without change.

CHAPTER 61

State Medical Examiner

Mississippi Medical Examiner Act of 1986	41-61-51
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MISSISSIPPI MEDICAL EXAMINER ACT OF 1986

SEC.	
41-61-53.	Definitions.
41-61-55.	State Medical Examiner; appointment; discharge; qualifications; State Medical Examiner Advisory Council; composition and purpose.
41-61-59.	Report of death to medical examiner; investigation of death; compensation of chief medical examiner or investigator.
41-61-61.	County medical examiner to be notified of death; disturbing body at scene of death; notification to State Medical Examiner; penalty for violations; transporting body to autopsy facility.
41-61-63.	Duties of State Medical Examiner; completion of death certificate; medical examiner not to favor particular funeral homes.
41-61-65.	Autopsy; reports; immunity from liability; review of determination.
41-61-75.	Fees; expert witness; expenses; SIDS/Child Death Scene Investigation reports [Repealed effective July 1, 2014].
41-61-77.	Central office for Crime Laboratory and State Medical Examiner; use of private facilities for investigating deaths; personnel; pathologists.

§ 41-61-53. Definitions.

For the purposes of Sections 41-61-51 through 41-61-79, the following definitions shall apply:

- (a) "Certification of death" means signing the death certificate.
- (b) "Coroner" means the elected county official provided for in Sections 19-21-101 through 19-21-107.
- (c) "County medical examiner investigator" means a nonphysician trained and appointed to investigate and certify deaths affecting the public interest.
- (d) "County medical examiner" means a licensed physician appointed to investigate and certify deaths affecting the public interest.
- (e) "Death affecting the public interest" means any death of a human being where the circumstances are sudden, unexpected, violent, suspicious or unattended.
- (f) "Medical examiner" means the State Medical Examiner, county medical examiners and county medical examiner investigators collectively, unless otherwise specified.
- (g) "Pronouncement of death" means the statement of opinion that life has ceased for an individual.
- (h) "State medical examiner" means the board certified forensic pathologist/physician appointed by the Commissioner of Public Safety pursuant to Section 41-61-55 to investigate and certify deaths that affect the public interest.

SOURCES: Laws, 1986, ch. 459, § 7; Laws, 2011, ch. 499, § 2, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment substituted “Commissioner of Public Safety pursuant to Section 41-61-55” for “Commissioner of Public Safety” in (h); and made a minor stylistic change.

§ 41-61-55. State Medical Examiner; appointment; discharge; qualifications; State Medical Examiner Advisory Council; composition and purpose.

(1) There is hereby created the position of State Medical Examiner, to be established as herein provided under the supervision of the Commissioner of Public Safety. The State Medical Examiner shall be appointed by the Commissioner of Public Safety subject to the approval of a majority of a panel composed of the following: (a) the Dean of the University of Mississippi Medical Center School of Medicine; (b) the Dean of the University of Mississippi School of Law; and (c) the State Health Officer. The State Medical Examiner may be discharged only for good cause, upon the recommendation of the Commissioner of Public Safety, and by a majority of the same panel.

(2) Each applicant for the position of State Medical Examiner shall, as a minimum, be a physician who is eligible for a license to practice medicine in Mississippi and be certified in forensic pathology by the American Board of Pathology.

(3) There is hereby created the State Medical Examiner Advisory Council composed of the State Health Officer or his or her designee, the Dean of the University of Mississippi Medical Center School of Medicine or his or her designee, the Commissioner of Public Safety, the Attorney General or his or her designee, the President of the Mississippi Coroners' Association or his or her designee, the President of the Mississippi Prosecutors Association or his or her designee, the President of the Mississippi Public Defenders Association or his or her designee, the President of the Mississippi Association of Chiefs of Police or his or her designee, and the President of the Mississippi Sheriff's Association or his or her designee. The council shall be purely advisory and serve as a liaison between the State Medical Examiner and the various entities related to the Medical Examiner Act.

SOURCES: Laws, 1986, ch. 459, § 8; Laws, 2011, ch. 499, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment added subsection designations; rewrote (1); added (3); and deleted the former last paragraph which read: “The State Medical Examiner may be removed by the commissioner only for inefficiency or other good cause, after written notice and a hearing complying with due process of law.”

JUDICIAL DECISIONS

1. Determination of death.

Expert testimony as to the cause and manner of the victim's death was permissible in defendant's murder trial because the trial court accepted, without objection from defendant, that the expert was qualified in the area of forensic pathology, and the expert did not testify that he was the

State Medical Examiner, and, therefore, the expert was not required to be board certified by the American Board of Pathology. *Keys v. State*, 33 So. 3d 1143 (Miss. Ct. App. 2009), writ of certiorari denied by 34 So. 3d 1176, 2010 Miss. LEXIS 228 (Miss. 2010).

§ 41-61-59. Report of death to medical examiner; investigation of death; compensation of chief medical examiner or investigator.

(1) A person's death that affects the public interest as specified in subsection (2) of this section shall be promptly reported to the medical examiner by the physician in attendance, any hospital employee, any law enforcement officer having knowledge of the death, the embalmer or other funeral home employee, any emergency medical technician, any relative or any other person present. The appropriate medical examiner shall notify the municipal or state law enforcement agency or sheriff and take charge of the body. When the medical examiner has received notification under Section 41-39-15(6) that the deceased is medically suitable to be an organ and/or tissue donor, the medical examiner's authority over the body shall be subject to the provisions of Section 41-39-15(6). The appropriate medical examiner shall notify the Mississippi Bureau of Narcotics within twenty-four (24) hours of receipt of the body in cases of death as described in subsection (2) (m) or (n) of this section.

(2) A death affecting the public interest includes, but is not limited to, any of the following:

- (a) Violent death, including homicidal, suicidal or accidental death.
- (b) Death caused by thermal, chemical, electrical or radiation injury.
- (c) Death caused by criminal abortion, including self-induced abortion, or abortion related to or by sexual abuse.
- (d) Death related to disease thought to be virulent or contagious that may constitute a public hazard.
- (e) Death that has occurred unexpectedly or from an unexplained cause.
- (f) Death of a person confined in a prison, jail or correctional institution.
- (g) Death of a person where a physician was not in attendance within thirty-six (36) hours preceding death, or in prediagnosed terminal or bedfast cases, within thirty (30) days preceding death.
- (h) Death of a person where the body is not claimed by a relative or a friend.
- (i) Death of a person where the identity of the deceased is unknown.
- (j) Death of a child under the age of two (2) years where death results from an unknown cause or where the circumstances surrounding the death indicate that sudden infant death syndrome may be the cause of death.

(k) Where a body is brought into this state for disposal and there is reason to believe either that the death was not investigated properly or that there is not an adequate certificate of death.

(l) Where a person is presented to a hospital emergency room unconscious and/or unresponsive, with cardiopulmonary resuscitative measures being performed, and dies within twenty-four (24) hours of admission without regaining consciousness or responsiveness, unless a physician was in attendance within thirty-six (36) hours preceding presentation to the hospital, or in cases in which the decedent had a prediagnosed terminal or bedfast condition, unless a physician was in attendance within thirty (30) days preceding presentation to the hospital.

(m) Death that is caused by drug overdose or which is believed to be caused by drug overdose.

(n) When a stillborn fetus is delivered and the cause of the demise is medically believed to be from the use by the mother of any controlled substance as defined in Section 41-29-105.

(3) The State Medical Examiner is empowered to investigate deaths, under the authority hereinafter conferred, in any and all political subdivisions of the state. The county medical examiners and county medical examiner investigators, while appointed for a specific county, may serve other counties on a regular basis with written authorization by the State Medical Examiner, or may serve other counties on an as-needed basis upon the request of the ranking officer of the investigating law enforcement agency. If a death affecting the public interest takes place in a county other than the one where injuries or other substantial causal factors leading to the death have occurred, jurisdiction for investigation of the death may be transferred, by mutual agreement of the respective medical examiners of the counties involved, to the county where the injuries or other substantial causal factors occurred, and the costs of autopsy or other studies necessary to the further investigation of the death shall be borne by the county assuming jurisdiction.

(4) The chief county medical examiner or chief county medical examiner investigator may receive from the county in which he serves a salary of Nine Hundred Dollars (\$900.00) per month, in addition to the fees specified in Sections 41-61-69 and 41-61-75, provided that no county shall pay the chief county medical examiner or chief county medical examiner investigator less than One Hundred Dollars (\$100.00) per month as a salary, in addition to other compensation provided by law. In any county having one or more deputy medical examiners or deputy medical examiner investigators, each deputy may receive from the county in which he serves, in the discretion of the board of supervisors, a salary of not more than Nine Hundred Dollars (\$900.00) per month, in addition to the fees specified in Sections 41-61-69 and 41-61-75. For this salary the chief shall assure twenty-four-hour daily and readily available death investigators for the county, and shall maintain copies of all medical examiner death investigations for the county for at least the previous five (5) years. He shall coordinate his office and duties and cooperate with the State Medical Examiner, and the State Medical Examiner shall cooperate with him.

SOURCES: Laws, 1986, ch. 459, § 10; Laws, 1987, ch. 504; Laws, 1989, ch. 455, § 2; Laws, 1990, ch. 453, § 2; Laws, 1991, ch. 591, § 1; Laws, 1993, ch. 411, § 1; Laws, 1998, ch. 567, § 1; Laws, 2003, ch. 548, § 1; Laws, 2004, ch. 505, § 5; Laws, 2005, ch. 472, § 3; Laws, 2010, ch. 436, § 2; Laws, 2011, ch. 499, § 3, eff from and after July 1, 2011.

Amendment Notes — The 2010 amendment deleted the former third sentence in (3).

The 2011 amendment deleted former (5) which read: “A body composed of the State Medical Examiner, whether appointed on a permanent or interim basis, the Director of the State Board of Health or his designee, the Attorney General or his designee, the President of the Mississippi Coroners’ Association (or successor organization) or his designee, and a certified pathologist appointed by the Mississippi State Medical Association shall adopt, promulgate, amend and repeal rules and regulations as may be deemed necessary by them from time to time for the proper enforcement, interpretation and administration of Sections 41-61-51 through 41-61-79, in accordance with the provisions of the Mississippi Administrative Procedures Law, being Section 25-43-1 et seq.”

§ 41-61-61. County medical examiner to be notified of death; disturbing body at scene of death; notification to State Medical Examiner; penalty for violations; transporting body to autopsy facility.

(1) Upon the death of any person where that death affects the public interest, the medical examiner of the county in which the body of the deceased is found or, if death occurs in a moving conveyance, where the conveyance stops and death is pronounced, shall be notified promptly by any person having knowledge or suspicion of such a death, as provided in subsection (1) of Section 41-61-59. The medical examiner shall then notify the State Medical Examiner, in accordance with Section 41-61-63(2)(a). No person shall disturb the body at the scene of such a death until authorized by the medical examiner, unless the medical examiner is unavailable and it is determined by an appropriate law enforcement officer that the presence of the body at the scene would risk the integrity of the body or provide a hazard to the safety of others. For the limited purposes of this section, expression of an opinion that death has occurred may be made by a nurse, an emergency medical technician, or any other competent person, in the absence of a physician.

(2) The discovery of anatomical material suspected of being part of the human body shall be promptly reported either (a) to the medical examiner of the county in which the material is found, who shall report the discovery to the State Medical Examiner, or (b) to the State Medical Examiner.

(3) A person who willfully moves, distributes or conceals a body or body part in violation of this section is guilty of a misdemeanor, and may be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for not more than six (6) months in the county jail, or by both such fine and imprisonment.

(4) Upon oral or written authorization of the medical examiner, if an autopsy is to be performed, the body shall be transported directly to an autopsy

facility in a suitable secure conveyance, and the expenses of transportation shall be paid by the county for which the service is provided. The county may contract with individuals or make available a vehicle to the medical examiner or law enforcement personnel for transportation of bodies.

SOURCES: Laws, 1986, ch. 459, § 11; Laws, 2011, ch. 499, § 4, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment added the second sentence in (1); and rewrote (2).

§ 41-61-63. Duties of State Medical Examiner; completion of death certificate; medical examiner not to favor particular funeral homes.

(1) The State Medical Examiner shall:

(a) Provide assistance, consultation and training to county medical examiners, county medical examiner investigators and law enforcement officials.

(b) Keep complete records of all relevant information concerning deaths or crimes requiring investigation by the medical examiners.

(c) Promulgate rules and regulations regarding the manner and techniques to be employed while conducting autopsies; the nature, character and extent of investigations to be made into deaths affecting the public interest to allow a medical examiner to render a full and complete analysis and report; the format and matters to be contained in all reports rendered by the medical examiners; and all other things necessary to carry out the purposes of Sections 41-61-51 through 41-61-79. The State Medical Examiner shall make such amendments to these rules and regulations as may be necessary. All medical examiners, coroners and law enforcement officers shall be subject to such rules.

(d) Cooperate with the crime detection and medical examiner laboratories authorized by Section 45-1-17, the University of Mississippi Medical Center, the Attorney General, law enforcement agencies, the courts and the State of Mississippi.

(2) In addition, the medical examiners shall:

(a) Upon receipt of notification of a death affecting the public interest, make inquiries regarding the cause and manner of death, reduce the findings to writing and promptly make a full report to the State Medical Examiner on forms prescribed for that purpose. The medical examiner shall be authorized to inspect and copy the medical reports of the decedent whose death is under investigation. However, the records copied shall be maintained as confidential so as to protect the doctor/patient privilege. The medical examiners shall be authorized to request the issuance of subpoenas, through the proper court, for the attendance of persons and for the production of documents as may be required by their investigation.

(b) Complete the medical examiner's portion of the certificate of death within seventy-two (72) hours of assuming jurisdiction over a death, and

forward the certificate to the funeral director or to the family. The medical examiner's portion of the certificate of death shall include the decedent's name, the date and time of death, the cause of death and the certifier's signature. If determination of the cause and/or manner of death are pending an autopsy or toxicological or other studies, these sections on the certificate may be marked "pending," with amendment and completion to follow the completion of the postmortem studies. The State Medical Examiner shall be authorized to amend a death certificate; however, the State Medical Examiner is not authorized to change or amend any death certificate after he has resigned or been removed from his office as the State Medical Examiner. Where an attending physician refuses to sign a certificate of death, or in case of any death, the State Medical Examiner or properly qualified designee may sign the death certificate.

(c) Cooperate with other agencies as provided for the State Medical Examiner in subsection (1)(d) of this section.

(d) In all investigations of deaths affecting the public interest where an autopsy will not be performed, obtain or attempt to obtain postmortem blood, urine and/or vitreous fluids. Medical examiners may also obtain rectal temperature measurements, known hair samples, radiographs, gunshot residue/wiping studies, fingerprints, palm prints and other noninvasive studies as the case warrants and/or as directed by the State Medical Examiner. Decisions shall be made in consultation with investigating law enforcement officials and/or the State Medical Examiner. The cost of all studies not performed by the Mississippi Crime Laboratory shall be borne by the county. County medical examiner investigators shall be authorized to obtain these postmortem specimens themselves following successful completion of the death investigation training school.

(e) In all investigations of deaths occurring in the manner specified in subsection (2)(j) of Section 41-61-59, a death investigation shall be performed by the medical examiners in accordance with the child death investigation protocol established by the State Medical Examiner. The results of the death investigation shall be reported to the State Medical Examiner on forms prescribed for that purpose by the State Medical Examiner and to appropriate authorities, including police and child protective services, within three (3) days of the conclusion of the death investigation.

(3) The medical examiner shall not use his position or authority to favor any particular funeral home or funeral homes.

SOURCES: Laws, 1986, ch. 459, § 12; Laws, 1987, ch. 483, § 30; Laws, 1988, ch. 442, § 27; Laws, 1989, ch. 537, § 26; Laws, 1990, ch. 518, § 27; Laws, 1991, ch. 618, § 26; Laws, 1992, ch. 491 § 28; Laws, 1996, ch. 485, § 1; Laws, 2003, ch. 383, § 1; Laws, 2011, ch. 499, § 5, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment substituted "shall" for "may" in third sentence in (2)(d).

§ 41-61-65. Autopsy; reports; immunity from liability; review of determination.

(1) If, in the opinion of the medical examiner investigating the case, it is advisable and in the public interest that an autopsy or other study be made for the purpose of determining the primary and/or contributing cause of death, an autopsy or other study shall be made by the State Medical Examiner, or the State Medical Examiner may choose a competent pathologist who is designated by the State Medical Examiner or the Department of Public Safety as a pathologist qualified to perform postmortem examinations and autopsies to perform the autopsy or study. To be eligible to be designated under this section, a pathologist must be an M.D. or D.O. who is certified in forensic pathology by the American Board of Pathology unless a certified forensic pathologist is not available to perform a postmortem examination or autopsy within a reasonable time. The State Medical Examiner or designated pathologist may retain any tissues as needed for further postmortem studies or documentation. When the medical examiner has received notification under Section 41-39-15(6) that the deceased is medically suitable to be an organ and/or tissue donor, the State Medical Examiner or designated pathologist may retain any biopsy or medically approved sample of the organ and/or tissue in accordance with the provisions of Section 41-39-15(6). A complete autopsy report of findings and interpretations, prepared on forms designated for this purpose, shall be submitted promptly to the State Medical Examiner. Copies of the report shall be furnished to the authorizing medical examiner, district attorney and court clerk. A copy of the report shall be furnished to one (1) adult member of the immediate family of the deceased or the legal representative or legal guardian of members of the immediate family of the deceased upon request. In determining the need for an autopsy, the medical examiner may consider the request from the district attorney or county prosecuting attorney, law enforcement or other public officials or private persons. However, if the death occurred in the manner specified in subsection (2)(j) of Section 41-61-59, an autopsy shall be performed by the State Medical Examiner or a designated pathologist who is qualified as required by this subsection, and the report of findings shall be forwarded promptly to the State Medical Examiner, investigating medical examiner, the State Department of Health, the infant's attending physician and the local sudden infant death syndrome coordinator.

(2) Any medical examiner or duly licensed physician performing authorized investigations and/or autopsies as provided in Sections 41-61-51 through 41-61-79 who, in good faith, complies with the provisions of Sections 41-61-51 through 41-61-79 in the determination of the cause and/or manner of death for the purpose of certification of that death, shall not be liable for damages on account thereof, and shall be immune from any civil liability that might otherwise be incurred or imposed.

(3) Family members or others who disagree with the medical examiner's determination shall be able to petition and present written argument to the State Medical Examiner for further review. If the petitioner still disagrees, he

may petition the circuit court, which may, in its discretion, hold a formal hearing. In all those proceedings, the State Medical Examiner and the county medical examiner or county medical examiner investigator who certified the information shall be made defendants. All costs of the petition and hearing shall be borne by the petitioner.

SOURCES: Laws, 1986, ch. 459, § 13; Laws, 1990, ch. 484, § 1; Laws, 2002, ch. 424, § 2; Laws, 2003, ch. 383, § 2; Laws, 2005, ch. 472, § 4; Laws, 2010, ch. 436, § 1; Laws, 2011, ch. 499, § 6, eff from and after July 1, 2011.

Amendment Notes — The 2010 amendment, in (1), in the first sentence, added the language beginning “or the Department of Public Safety as a pathologist qualified to perform postmortem examinations and autopsies” through to the end, and in the last sentence, inserted “who is qualified as required by this subsection” and made a minor stylistic change.

The 2011 amendment rewrote the first sentence in (1).

§ 41-61-75. Fees; expert witness; expenses; SIDS/Child Death Scene Investigation reports [Repealed effective July 1, 2014].

(1) For each investigation with the preparation and submission of the required reports, the following fees shall be billed to and paid by the county for which the service is provided:

(a) A medical examiner or his deputy shall receive One Hundred Twenty-five Dollars (\$125.00) for each completed report of investigation of death, plus the examiner’s actual expenses. In addition to that fee, in cases where the cause of death was sudden infant death syndrome (SIDS) and the medical examiner provides a SIDS Death Scene Investigation report, the medical examiner shall receive for completing that report an additional Fifty Dollars (\$50.00), or an additional One Hundred Dollars (\$100.00) if the medical examiner has received advanced training in child death investigations and presents to the county a certificate of completion of that advanced training. The State Medical Examiner shall develop and prescribe a uniform format and list of matters to be contained in SIDS/Child Death Scene Investigation reports, which shall be used by all county medical examiners and county medical examiner investigators in the state.

(b) The pathologist performing autopsies as provided in Section 41-61-65 shall receive One Thousand Dollars (\$1,000.00) per completed autopsy, plus mileage expenses to and from the site of the autopsy, and shall be reimbursed for any out-of-pocket expenses for third-party testing, not to exceed One Hundred Dollars (\$100.00) per autopsy.

(2) Any medical examiner, physician or pathologist who is subpoenaed for appearance and testimony before a grand jury, courtroom trial or deposition shall be entitled to an expert witness hourly fee to be set by the court and mileage expenses to and from the site of the testimony, and such amount shall be paid by the jurisdiction or party issuing the subpoena.

(3) This section shall stand repealed on July 1, 2014.

SOURCES: Laws, 1986, ch. 459, § 18; Laws, 1990, ch. 453, § 5; Laws, 1991, ch. 591, § 2; Laws, 1993, ch. 411, § 3; Laws, 1998, ch. 567, § 2; Laws, 2007, ch. 367, § 1; Laws, 2008, ch. 362, § 1; reenacted and amended, Laws, 2011, ch. 497, § 1, eff from and after June 30, 2011.

Editor's Note — Laws of 2007, ch. 367, § 2, as amended by Laws of 2011, ch. 497, § 2, which deleted the repealer that would have become effective on June 30, 2011, provides as follows:

“SECTION 2. This act shall take effect and be in force from and after October 1, 2007.”

Amendment Notes — The 2011 amendment reenacted and amended the section by adding (3).

§ 41-61-77. Central office for Crime Laboratory and State Medical Examiner; use of private facilities for investigating deaths; personnel; pathologists.

(1) The Department of Public Safety shall establish and maintain a central office for the Mississippi Crime Laboratory and the State Medical Examiner with appropriate facilities and personnel for postmortem medicolegal examinations. District offices, with appropriate facilities and personnel, may also be established and maintained if considered necessary by the department for the proper management of postmortem examinations.

The facilities of the central and district offices and their staff services may be available to the medical examiners and designated pathologists in their investigations.

(2) In order to provide proper facilities for investigating deaths as authorized in Sections 41-61-51 through 41-61-79, the State Medical Examiner may arrange for the use of existing public or private laboratory facilities. The State Medical Examiner may contract with qualified persons to perform or to provide support services for autopsies, studies and investigations not inconsistent with other applicable laws. Such laboratory facilities may be located at the University of Mississippi Medical Center or any other suitable location. The State Medical Examiner may be an affiliate or regular faculty member of the Department of Pathology at the University of Mississippi Medical Center and may serve as a member of the faculty of other institutions of higher learning. He shall be authorized to employ, with the approval of the Commissioner of Public Safety, such additional scientific, technical, administrative and clerical assistants as are necessary for performance of his duties. Such employees in the office of the State Medical Examiner shall be subject to the rules, regulations and policies of the state personnel system in their employment.

(3) The State Medical Examiner shall be authorized to appoint and/or employ qualified pathologists as additional associate and assistant state medical examiners as are necessary to carry out the duties of his office. The associate and assistant state medical examiners shall be licensed to practice medicine in Mississippi and, insofar as practicable, shall be trained in the field of forensic pathology. The State Medical Examiner may delegate specific duties

to competent and qualified medical examiners within the scope of the express authority granted to him by law or regulation. Employees of the office of the State Medical Examiner shall have the authority to enter any political subdivisions of this state for the purpose of carrying out medical investigations.

SOURCES: Laws, 1986, ch. 459, § 19; Laws, 1989, ch. 455, § 1; Laws, 2010, ch. 436, § 3; Laws, 2011, ch. 499, § 7, eff from and after July 1, 2011.

Editor’s Note — This section is being set out to correct an error in the 2011 Cumulative Supplement. In (3), the phrase “appoint and/or employ” was substituted for “appoint and/or employ” in the first sentence.

Amendment Notes — The 2010 amendment deleted (4), which dealt with the authority of counties to enter into an interlocal agreement in order to operate a medical examiner district independent of the state medical examiner’s office.

The 2011 amendment rewrote the fourth sentence in (2).

CHAPTER 67

Mississippi Individual On-Site Wastewater Disposal System Law

General Provisions	41-67-1
Wastewater Advisory Board	41-67-101

GENERAL PROVISIONS

SEC.	
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41-67-39.	License required for person operating as pumper removing and disposing of sludge from on-site wastewater disposal systems; license requirements; official list of licensed pumpers; penalty for operating without license; suspension or revocation of pumper certification; grounds [Repealed effective July 1, 2013].

§ 41-67-1. Short title; legislative purpose, findings and intent [Repealed effective July 1, 2013].

SOURCES: Laws, 1996, ch. 516, § 1; reenacted without change, Laws, 2001, ch. 578; reenacted without change, Laws, 2002, ch. 493, § 1; reenacted without change, Laws, 2003, ch. 525, § 1; reenacted without change, Laws, 2005, ch. 545, § 1; reenacted without change, Laws, 2006, ch. 391, § 1; reenacted and amended, Laws, 2008, ch. 563, § 1; reenacted without change, Laws, 2011, ch. 544, § 1, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-2. Definitions [Repealed effective July 1, 2013].

For purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Advanced treatment system" means individual on-site wastewater treatment systems that comply with Section 47-67-10.

(b) "Alternative system" means any on-site sewage treatment and disposal system used in lieu of a conventional system.

(c) "Board" means the Mississippi State Board of Health.

(d) "Centralized sewerage system" means pipelines or conduits, pumping stations, force mains, and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal other than an individual on-site wastewater disposal system.

(e) "Certified installer" means any person who has met the requirements of Section 41-67-25.

(f) "Certified manufacturer" means any person registered with the department who holds a written certification issued by the department allowing the manufacturer to sell on-site wastewater products in the state.

(g) "Certified professional evaluator" means any person who has met the requirements of Section 41-67-37 or a registered professional engineer.

(h) "Certified pumper" means any person registered with the department who holds a written certification issued by the department allowing the person to engage in the removal and disposal of sludge, grease and waste.

(i) "Conventional system" means an individual on-site wastewater disposal system consisting of a septic tank and subsurface disposal field.

(j) "Department" means the Mississippi State Department of Health.

(k) "Final approval" means a determination by the department that the system being inspected by the department fulfills all requirements under this chapter.

(l) “Generator” means any person whose act or process produces sewage or other material suitable for disposal in an individual on-site wastewater disposal system.

(m) “Individual on-site wastewater disposal system” means a sewage treatment and effluent disposal system that does not discharge into waters of the state, that serves only one (1) legal tract, that accepts only residential waste and similar waste streams maintained on the property of the generator, and that is designed and installed in accordance with this law and regulations of the board.

(n) “Notice of intent” means notification by an applicant to the department prior to construction and submission of all required information, which is used by the department to design an individual on-site wastewater disposal system.

(o) “Performance-based system” means an individual on-site wastewater disposal system designed to meet standards established to designate a level of treatment of wastewater that an individual on-site wastewater disposal system must meet, including, but not limited to, biochemical oxygen demand, total suspended solids, nutrient reduction and fecal coliform.

(p) “Person” means any individual, trust, firm, joint-stock company, public or private corporation (including a government corporation), partnership, association, state, or any agency or institution thereof, municipality, commission, political subdivision of a state or any interstate body, and includes any officer or governing or managing body of any municipality, political subdivision, or the United States or any officer or employee thereof.

(q) “Property of the generator” means land owned by or under permanent legal easement or lease to the generator.

(r) “Qualified homeowner” means the current owner of a specific residence where that homeowner resides and where the homeowner has met the requirements of the Department of Health regulations.

(s) “Registered professional engineer” means any person who has met the requirements under Section 73-13-23(1) and who has been issued a certificate of registration as a professional engineer.

(t) “Subdivision” means any tract or combination of adjacent tracts of land that is subdivided into ten (10) or more tracts, sites or parcels for the purpose of commercial or residential development.

SOURCES: Laws, 1996, ch. 516, § 2; reenacted without change, Laws, 2001, ch. 578, § 2; reenacted without change, Laws, 2002, ch. 493, § 2; reenacted without change, Laws, 2003, ch. 525, § 2; reenacted and amended, Laws, 2005, ch. 545, § 2; reenacted without change, Laws, 2006, ch. 391, § 2; reenacted and amended, Laws, 2008, ch. 563, § 2; reenacted and amended, Laws, 2011, ch. 544, § 2, eff from and after passage (approved Apr. 26, 2011.)

Amendment Notes — The 2011 amendment reenacted and amended the section by inserting “Certified” in (e); adding (f); adding “or a registered professional engineer” to the end of (g); adding (h); deleted “gravity-fed” preceding “subsurface disposal system” in (i); adding (k), (n), (s); and making minor stylistic changes.

§ 41-67-3. Duties and responsibilities [Repealed effective July 1, 2013].

(1) The State Board of Health shall have the following duties and responsibilities:

(a) To exercise general supervision over the design, construction, operation and maintenance of individual on-site wastewater disposal systems;

(b) To adopt, modify, repeal and promulgate rules and regulations, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to, to grant exemptions from and to enforce rules and regulations implementing or effectuating the duties of the board under this chapter to protect the public health. The board may grant variances from rules and regulations adopted under this chapter, including requirements for buffer zones, or from setbacks required under Section 41-67-7 where the granting of a variance shall not subject the public to unreasonable health risks or jeopardize environmental resources;

(c) To provide or deny certification for persons engaging in the business of the design, construction or installation of individual on-site wastewater disposal systems and persons engaging in the removal and disposal of the sludge and liquid waste from those systems;

(d) To suspend or revoke certifications issued to persons engaging in the business of the design, construction or installation of individual on-site wastewater disposal systems or persons engaging in the removal and disposal of the sludge and liquid waste from those systems, when it is determined the person has violated this chapter or applicable rules and regulations;

(e) To require the submission of information deemed necessary by the department to determine the suitability of individual lots for individual on-site wastewater disposal systems; and

(f) To adopt, modify, repeal and promulgate rules and regulations, after due notice and hearing, and where not otherwise prohibited by federal or state law, as necessary to determine the suitability of individual on-site wastewater disposal systems in subdivisions.

(2) Nothing in this chapter shall preclude a certified professional evaluator or registered professional engineer from providing services relating to the design of an individual on-site wastewater disposal system to comply with this chapter, except for performance-based systems as specified in subsection (4) of this section. A certified professional evaluator or registered professional engineer shall notify the department in writing of those services being provided, including the type of treatment, the type of disposal, and the property address for the treatment and disposal system. Construction or installation shall not begin prior to authorization by the department. The department shall respond within ten (10) business days with authorization that the certified professional engineer or registered professional engineer fulfills the requirements of the law.

(3) To assure the effective and efficient administration of this chapter, the board shall adopt rules governing the design, construction or installation,

operation and maintenance of individual on-site wastewater disposal systems, including rules concerning the:

(a) Review and approval of individual on-site wastewater disposal systems in accordance with Section 41-67-6;

(b) Certification of installers of individual on-site wastewater disposal systems and persons engaging in the removal and disposal of the sludge and liquid waste from those systems;

(c) Registration and requirements for testing and listing of manufacturers of advanced treatment systems;

(d) Certification of certified professional evaluators; and

(e) Creation of regulations that authorize the original and any subsequent homeowner to be trained by factory installers or other factory representatives in order to educate the homeowner with the necessary knowledge to provide maintenance to the homeowner's system; no fees shall be charged to the homeowner for such training, thus allowing the homeowner to meet the requirements of Section 41-67-6(8).

(4) In addition, the board shall adopt rules establishing performance standards for individual on-site wastewater disposal systems for single family residential generators and rules concerning the operation and maintenance of individual on-site wastewater disposal systems designed to meet those standards. The performance standards shall be consistent with the federal Clean Water Act, maintaining the wastes on the property of the generator and protection of the public health. Rules for the operation and maintenance of individual on-site wastewater disposal systems designed to meet performance standards shall include rules concerning the following:

(a) A standard application form and requirements for supporting documentation;

(b) Application review;

(c) Approval or denial of authorization for proposed systems;

(d) Requirements, as deemed appropriate by the board, for annual renewal of authorization;

(e) Enforcement of the requirements and conditions of authorization; and

(f) Inspection, monitoring, sampling and reporting on the performance of the system.

Any system proposed for authorization in accordance with performance standards must be designed and certified by a professional engineer registered in the State of Mississippi and must be authorized by the board before installation.

(5) To the extent practicable, all rules and regulations adopted under this chapter shall give maximum flexibility to persons installing individual on-site wastewater disposal systems and a maximum number of options consistent with the federal Clean Water Act, consistent with maintaining the wastes on the property of the generator and consistent with protection of the public health. In addition, all rules and regulations, to the extent practicable, shall encourage the use of economically feasible systems, including alternative techniques and technologies for individual on-site wastewater disposal.

(6) All regulations shall be applied uniformly in all areas of the state and shall take into consideration and make provision for different types of soil in the state when performing soil and site evaluations.

(7) No public utility supplying water shall make connection to any dwelling house, mobile home or residence without the prior written approval of the department certifying that the plan for the sewage treatment and disposal system at the location of the property complies with this chapter. Temporary connections of water utilities may be made during construction if the department has approved a plan for a sewage treatment and disposal system and the owner of the property has agreed to have the system inspected and approved by the department before the use or occupancy of the property.

SOURCES: Laws, 1996, ch. 516, § 3; reenacted without change, Laws, 2001, ch. 578, § 3; reenacted without change, Laws, 2002, ch. 493, § 3; reenacted without change, Laws, 2003, ch. 525, § 3; reenacted and amended, Laws, 2005, ch. 545, § 3; reenacted without change, Laws, 2006, ch. 391, § 3; reenacted and amended, Laws, 2008, ch. 563, § 3; reenacted and amended, Laws, 2011, ch. 544, § 3, eff from and after passage (approved Apr. 26, 2011.)

Amendment Notes — The 2011 amendment reenacted and amended the section by rewriting (2); deleting former (3)(d), which read: “Certification of certified maintenance providers”; inserting “no fees shall be charged to the homeowner for such training” following “homeowner’s system” in (3)(e); deleted “who is a certified professional evaluator” preceding “State of Mississippi” in the last paragraph of (4); and made minor stylistic changes.

§ 41-67-4. Duties and responsibilities of the Commission on Environmental Quality regarding individual on-site wastewater disposal systems [Repealed effective July 1, 2013].

SOURCES: Laws, 1996, ch. 516, § 4; reenacted without change, Laws, 2001, ch. 578, § 4; reenacted without change, Laws, 2002, ch. 493, § 4; reenacted and amended, Laws, 2003, ch. 525, § 4; Laws, 2005, ch. 545, § 4; reenacted without change, Laws, 2006, ch. 391, § 4; reenacted without change, Laws, 2008, ch. 563, § 4; reenacted without change, Laws, 2011, ch. 544, § 4, eff from and after passage (approved Apr. 26, 2011.)

Editor’s Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-5. Filing notice of intent for installation of an individual on-site wastewater disposal system [Repealed effective July 1, 2013].

SOURCES: Laws, 1996, ch. 516, § 5; reenacted without change, Laws, 2001, ch. 578, § 5; reenacted and amended, Laws, 2002, ch. 493, § 5; reenacted without change, Laws, 2003, ch. 525, § 5; reenacted without change, Laws,

2005, ch. 545, § 5; reenacted without change, Laws, 2006, ch. 391, § 5; reenacted and amended, Laws, 2008, ch. 563, § 5; reenacted without change, Laws, 2011, ch. 544, § 5, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-6. Recommendations; request for variance; request for determination of suitability; noncompliance and penalties; post-construction or installation final approval request; owner required to keep continuing maintenance agreement with certified maintenance provider or qualified homeowner and penalty for violation; exemption of certain property [Repealed effective July 1, 2013].

(1) Within five (5) working days following receipt of the notice of intent and plot plan by an owner, lessee or developer of any lot or tract of land, the department shall conduct a soil and site evaluation, except in cases where a certified professional evaluator or registered professional engineer provides services relating to the design, construction or installation of an individual on-site wastewater disposal system to comply with this chapter. Within ten (10) additional working days, the department shall make recommendations to the owner, lessee or developer of the type or types of individual on-site wastewater disposal systems suitable for installation on the lot or tract, unless there are conditions requiring further investigation that are revealed in the initial evaluation. In making recommendations on the type or types of individual on-site wastewater disposal systems suitable for installation on a lot or tract, personnel of the department shall use best professional judgment based on rules and regulations adopted by the board, considering the type or types of systems which are installed and functioning on lots or tracts near the subject lot or tract. To the extent practicable, the recommendations shall give the owner, lessee or developer maximum flexibility and a maximum number of options consistent with the federal Clean Water Act, consistent with maintaining the wastes on the property of the generator and consistent with protection of the public health. The system or systems recommended shall be environmentally sound and cost-effective. The department or a certified professional evaluator shall provide complete information, including all applicable requirements and regulations on all systems recommended. The owner, lessee or developer shall have the right to choose among systems. The department shall provide the owner, lessee or developer with a form that specifies all types of individual on-site wastewater disposal systems that are suitable for installation on the lot or tract and lists all installers of those systems that are certified by the department. Approval of the design, construction or installation of an individual on-site wastewater disposal system by the department is required,

except as otherwise provided in subsection (9) of this section. Upon completion of installation of the system, the department shall approve the design, construction or installation of that system, as requested, if the system is designed, constructed and installed, as the case may be, in accordance with the rules and regulations of the board. Whenever a person requests approval of an individual on-site wastewater disposal system and has met the requirements in subsection (7), the department must approve or disapprove the request within five (5) working days. If the department disapproves the request, the department shall state in writing the reasons for the disapproval. Homeowners may apply for a variance from the department by submitting a report for a proposed system to the department from a certified professional evaluator or registered professional engineer that the proposed wastewater treatment system will properly treat and maintain wastewater on the property and proof of errors and omissions insurance. The department shall grant the variance but still have authority for final approval to inspect that the system is installed as designed. All forms from the department relating to allowed wastewater systems shall include the variance option as an alternative. If the department does not respond to the request within ten (10) calendar days, the request for approval of the individual on-site wastewater disposal system shall be deemed approved.

(2) Within thirty (30) days of receipt of a request for determination of suitability of individual on-site wastewater disposal systems in a subdivision, the department shall advise the developer in writing either that all necessary information needed for determination of suitability has been received or state the additional information needed by the department for determination of suitability.

(3) Whenever a developer requests a determination of suitability of individual on-site wastewater disposal systems in a subdivision, the department must make the determination within forty-five (45) days after receipt of all necessary information needed for the determination of suitability from the developer. The department shall state in writing the reasons for its determination.

(4)(a) The installer or certified professional evaluator shall notify the department at least twenty-four (24) hours before beginning construction of an individual on-site wastewater disposal system and, at that time, schedule a time for inspection of the system with the appropriate county department of health.

(b) An installer shall not cover his work with soil or other surface material unless the installer has received authorization to cover the system after an inspection by a county department of health inspector, or unless a health inspector does not arrive for inspection after twenty-four (24) hours from the notification to the department beginning construction, in which case, an installer may submit an affidavit of proper installation to the department for final approval.

(5) A person may not design, construct or install, or cause to be designed, constructed or installed an individual on-site wastewater disposal system that does not comply with this chapter and rules and regulations of the board.

(6) If any person or contractor fails to obtain final approval or submit an affidavit of proper installation to the department in the installation of the system, the board, after due notice and hearing, may levy an administrative fine not to exceed Ten Thousand Dollars (\$10,000.00). Each wastewater system installed not in compliance with this chapter or applicable rules and regulations of the board may be considered a separate offense.

(7) After construction or installation of the individual on-site wastewater disposal system, the property owner or his agent shall provide a final approval request containing the following to the department:

(a) A signed affidavit from the installer or certified professional evaluator and any additional required documentation that the system was installed in compliance with all requirements, regulations and permit conditions applicable to the system installed; and

(b) For any advanced treatment system, an affidavit from the property owner agreeing to a continuing maintenance agreement on the installed system at the end of the required manufacturer's maintenance agreement.

(8) The property owner shall keep a continuing maintenance agreement with a certified installer or qualified homeowner on all advanced treatment systems in perpetuity.

(a) All systems existing on July 1, 2008, shall be grandfathered in until the system is reapproved or the system is replaced.

(b) Any person violating this subsection shall be subject to the penalties and damages as provided in Section 41-67-28(5).

(9) Any lot or tract that is two (2) acres or larger shall be exempt from the requirements of this chapter and regulations of the department relating to approval of individual on-site wastewater disposal systems by the department, provided that:

(a) All wastewater is contained on the lot or tract;

(b) No water course, as defined in Section 51-3-3(h), of Mississippi or the United States is impacted; and

(c) A certified installer provides the department with a signed affidavit attesting that the requirements of paragraphs (a) and (b) are met.

SOURCES: Laws, 1996, ch. 516, § 6; Laws, 1999, ch. 565, § 3; reenacted without change, Laws, 2001, ch. 578, § 6; reenacted without change, Laws, 2002, ch. 493, § 6; reenacted and amended, Laws, 2003, ch. 525, § 6; reenacted and amended, Laws, 2005, ch. 545, § 6; reenacted without change, Laws, 2006, ch. 391, § 6; reenacted and amended, Laws, 2008, ch. 563, § 6; reenacted and amended, Laws, 2011, ch. 544, § 6, eff from and after passage (approved Apr. 26, 2011.)

Amendment Notes — The 2011 amendment reenacted and amended the section in (1), by inserting “or registered professional engineer” following “certified professional evaluator” in the first sentence, “except as otherwise provided in subsection (9) of this section” at the end of the ninth sentence, adding three new sentences before the last sentence; substituted “twenty-four (24)” for “forty-eight (48)” preceding “hours before beginning construction of an individual” in (4)(a); adding language beginning “or unless a health inspector does not arrive for inspection” at the end of (4)(b); substituting “obtain final approval or submit an affidavit of proper installation to the department”

for “comply with all requirements and regulations” in the first sentence and substituted “may” for “shall” in the last sentence of (6); substituting “advanced treatment” for “alternative on-site water disposal” in (7)(b) and (8); substituted “certified installer” for “certified maintenance provider” in (8); rewrote (8)(a); and added (9).

§ 41-67-7. Requirements for approval of disposal systems; determination of feasibility [Repealed effective July 1, 2013].

SOURCES: Laws, 1996, ch. 516, § 7; reenacted without change, Laws, 2001, ch. 578, § 7; reenacted without change, Laws, 2002, ch. 493, § 7; reenacted without change, Laws, 2003, ch. 525, § 7; reenacted and amended, Laws, 2005, ch. 545, § 7; reenacted without change, Laws, 2006, ch. 391, § 7; reenacted and amended, Laws, 2008, ch. 563, § 7; reenacted without change, Laws, 2011, ch. 544, § 7, eff from and after passage (approved Apr. 26, 2011.)

Editor’s Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-9. Existing disposal systems; requirements for approval [Repealed effective July 1, 2013].

SOURCES: Laws, 1996, ch. 516, § 9; reenacted without change, Laws, 2001, ch. 578, § 9; reenacted without change, Laws, 2002, ch. 493, § 9; reenacted without change, Laws, 2003, ch. 525, § 9; reenacted and amended, Laws, 2005, ch. 545, § 9; reenacted without change, Laws, 2006, ch. 391, § 8; reenacted and amended, Laws, 2008, ch. 563, § 8; reenacted without change, Laws, 2011, ch. 544, § 8, eff from and after passage (approved Apr. 26, 2011.)

Editor’s Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-10. Testing and listing of advanced aerobic treatment systems [Repealed effective July 1, 2013].

(1) Advanced aerobic treatment systems may be installed only if they have been tested and are listed by a third-party certifying program at the time of installation. Advanced aerobic treatment systems shall be in compliance with standards for a Class I system as defined by the most current revision of American National Standards Institute/National Sanitation Foundation (ANSI/NSF) International Standard Number 40, which are incorporated by reference. An approved third-party certifying program shall comply with the

following provisions for systems which it has certified to be installed in Mississippi:

(a) Be accredited by the American National Standards Institute;

(b) Have established procedures which send representatives to distributors in Mississippi on a recurring basis to conduct evaluations to assure that distributors of certified advanced treatment systems are providing proper maintenance, have sufficient replacement parts available and are maintaining service records;

(c) Notify the department of the results of monitoring visits to manufacturers and distributors within sixty (60) days of the conclusion of the monitoring; and

(d) Submit completion reports on testing and any other information as the department may require for its review.

(2) All manufacturers of advanced treatment systems certified in Mississippi shall provide technical training staff to the department as needed.

SOURCES: Laws, 1996, ch. 516, § 10; reenacted without change, Laws, 2001, ch. 578, § 10; reenacted without change, Laws, 2002, ch. 493, § 10; reenacted without change, Laws, 2003, ch. 525, § 10; reenacted without change, Laws, 2005, ch. 545, § 10; reenacted without change, Laws, 2006, ch. 391, § 9; reenacted and amended, Laws, 2008, ch. 563, § 9; reenacted and amended, Laws, 2011, ch. 544, § 9, eff from and after passage (approved Apr. 26, 2011.)

Amendment Notes — The 2011 amendment reenacted and amended the section by rewriting (2).

§ 41-67-11. Temporary disposal systems; requirements for approval [Repealed effective July 1, 2013].

SOURCES: Laws, 1996, ch. 516, § 11; Laws, 1999, ch. 565, § 2; reenacted without change, Laws, 2001, ch. 578, § 11; reenacted without change, Laws, 2002, ch. 493, § 11; reenacted without change, Laws, 2003, ch. 525, § 11; reenacted without change, Laws, 2005, ch. 545, § 11; reenacted without change, Laws, 2006, ch. 391, § 10; reenacted and amended, Laws, 2008, ch. 563, § 10; reenacted without change, Laws, 2011, ch. 544, § 10, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-12. Assessment of fees [Repealed effective July 1, 2013].

SOURCES: Laws, 1996, ch. 516, § 12; reenacted without change, Laws, 2001, ch. 578, § 12; reenacted without change, Laws, 2002, ch. 493, § 12; reenacted without change, Laws, 2003, ch. 525, § 12; reenacted without change,

Laws, 2005, ch. 545, § 12; reenacted without change, Laws, 2006, ch. 391, § 11; reenacted without change, Laws, 2008, ch. 563, § 11; reenacted without change, Laws, 2011, ch. 544, § 11, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-15. Authority of municipalities and boards of supervisors to adopt more restrictive ordinances not impaired; Department of Health prohibited from approving system that does not comply with more restrictive ordinances [Repealed effective July 1, 2013].

SOURCES: Laws, 1996, ch. 516, § 13; reenacted without change, Laws, 2001, ch. 578, § 13; reenacted without change, Laws, 2002, ch. 493, § 13; reenacted without change, Laws, 2003, ch. 525, § 13; reenacted without change, Laws, 2005, ch. 545, § 13; reenacted without change, Laws, 2006, ch. 391, § 12; reenacted and amended, Laws, 2008, ch. 563, § 12; reenacted without change, Laws, 2011, ch. 544, § 12, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-19. Demonstrable competence of agents; implementing Chapter; completion of installer certification training [Repealed effective July 1, 2013].

SOURCES: Laws, 1992, ch. 536, § 8; Laws, 1996, ch. 516, § 15; reenacted without change, Laws, 2001, ch. 578, § 15; reenacted without change, Laws, 2002, ch. 493, § 15; reenacted without change, Laws, 2003, ch. 525, § 15; reenacted without change, Laws, 2005, ch. 545, § 15; reenacted without change, Laws, 2006, ch. 391, § 14; reenacted without change, Laws, 2008, ch. 563, § 13; reenacted without change, Laws, 2011, ch. 544, § 13, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-21. Owner repair of malfunctioning disposal system; abatement of health hazards; penalty for violations [Repealed effective July 1, 2013].

SOURCES: Laws, 1992, ch. 536, § 9; Laws, 1996, ch. 516, § 16; reenacted without change, Laws, 2001, ch. 578, § 16; reenacted without change, Laws, 2002, ch. 493, § 16; reenacted without change, Laws, 2003, ch. 525, § 16; reenacted without change, Laws, 2005, ch. 545, § 16; reenacted without change, Laws, 2006, ch. 391, § 15; reenacted without change, Laws, 2008, ch. 563, § 14; reenacted without change, Laws, 2011, ch. 544, § 14, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-23. Inspection by Department where Department approval requested [Repealed effective July 1, 2013].

SOURCES: Laws, 1992, ch. 536, § 10; Laws, 1996, ch. 516, § 17; reenacted without change, Laws, 2001, ch. 578, § 17; reenacted without change, Laws, 2002, ch. 493, § 17; reenacted without change, Laws, 2003, ch. 525, § 17; reenacted without change, Laws, 2005, ch. 545, § 17; reenacted without change, Laws, 2006, ch. 391, § 16; reenacted without change, Laws, 2008, ch. 563, § 15; reenacted without change, Laws, 2011, ch. 544, § 15, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-25. Certification of installers required; exception; renewal; revocation; certified installers listed; penalty for operating without certification [Repealed effective July 1, 2013].

(1) A person may not operate as an installer of individual on-site wastewater disposal systems unless that person is currently certified by the department. A person who installs an individual on-site wastewater disposal system on his own property for his primary residence is not considered an installer for purposes of this subsection.

(2) An installer of alternative systems or products must be a factory-trained and authorized representative. The manufacturer must furnish documentation to the department certifying the satisfactory completion of factory training and the establishment of the installer as an authorized manufacturer's representative.

(3) The board shall issue a certification to an installer if the installer:

(a) Completes an application form that complies with this chapter and rules adopted under this chapter;

(b) Satisfactorily completes the training program for installation and maintenance provided by the department;

(c) Pays the annual certification fee which shall be an amount not greater than Fifty Dollars (\$50.00); and

(d) Provides proof of having a valid general business liability insurance policy in effect with liability limits of at least Fifty Thousand Dollars (\$50,000.00) per occurrence and at least One Hundred Thousand Dollars (\$100,000.00) in total aggregate amount.

(4) Each installer shall furnish proof of certification to a property owner, lessee, the owner's representative or occupant of the property on which an individual on-site wastewater disposal system is to be designed, constructed, repaired or installed by that installer and to the department or its authorized representative, if requested.

(5) The department shall provide for annual renewal of certifications.

(6)(a) An installer's certification may be suspended or revoked by the board after notice and hearing if the installer violates this chapter or any rule or regulation adopted under this chapter.

(b) The installer may appeal a suspension or revocation under this section as provided by law.

(7) The department semiannually shall disseminate to the public an official list of certified installers and provide to county health departments a monthly update of the list.

(8) If any person is operating in the state as an installer without certification by the board, the board, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each violation.

(9) The department must provide for renewal installer certifications to be applied for at the local department offices.

SOURCES: Laws, 1992, ch. 536, § 11; Laws, 1996, ch. 516, § 18; reenacted and amended, Laws, 2001, ch. 578, § 18; reenacted without change, Laws, 2002, ch. 493, § 18; reenacted without change, Laws, 2003, ch. 525, § 18; reenacted without change, Laws, 2005, ch. 545, § 18; reenacted without change, Laws, 2006, ch. 391, § 17; reenacted and amended, Laws, 2008, ch. 563, § 16; reenacted and amended, Laws, 2011, ch. 544, § 16, eff from and after passage (approved Apr. 26, 2011.)

Amendment Notes — The 2011 amendment reenacted and amended the section by inserting “for installation and maintenance” in (3)(b); and inserted “which shall be an amount not greater than Fifty Dollars (\$50.00)” in (3)(c); and added (9).

§ 41-67-27. Registration required for manufacturers of individual on-site wastewater disposal systems or alternative treatment or disposal components to operate business [Repealed effective July 1, 2013].

SOURCES: Laws, 1992, ch. 536, § 12; Laws, 1996, ch. 516, § 19; reenacted without change, Laws, 2001, ch. 578, § 19; reenacted without change, Laws, 2002, ch. 493, § 19; reenacted without change, Laws, 2003, ch. 525, § 19; reenacted without change, Laws, 2005, ch. 545, § 19; reenacted without change, Laws, 2006, ch. 391, § 18; reenacted and amended, Laws, 2008, ch. 563, § 17; reenacted without change, Laws, 2011, ch. 544, § 17, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-28. Violations; penalties and damages [Repealed effective July 1, 2013].

SOURCES: Laws, 1992, ch. 536, § 13; Laws, 1996, ch. 516, § 20; reenacted without change, Laws, 2001, ch. 578, § 20; reenacted without change, Laws, 2002, ch. 493, § 20; reenacted without change, Laws, 2003, ch. 525, § 20; reenacted without change, Laws, 2005, ch. 545, § 20; reenacted without change, Laws, 2006, ch. 391, § 19; reenacted and amended, Laws, 2008, ch. 563, § 18; reenacted without change, Laws, 2011, ch. 544, § 18, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-29. Appeals [Repealed effective July 1, 2013].

SOURCES: Laws, 1992, ch. 536, § 14; Laws, 1996, ch. 516, § 21; reenacted without change, Laws, 2001, ch. 578, § 21; reenacted without change, Laws, 2002, ch. 493, § 21; reenacted without change, Laws, 2003, ch. 525, § 21; reenacted without change, Laws, 2005, ch. 545, § 21; reenacted without change, Laws, 2006, ch. 391, § 20; reenacted without change, Laws, 2008, ch. 563, § 19; reenacted without change, Laws, 2011, ch. 544, § 19, eff from and after passage (approved Apr. 26, 2011.)

Editor's Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-31. Repeal of §§ 41-67-1 through 41-67-29 and §§ 41-67-33 through 41-67-39.

Sections 41-67-1 through 41-67-29 and Sections 41-67-33 through 41-67-39 shall stand repealed on July 1, 2013.

SOURCES: Laws, 1996, ch. 516, § 24; Laws, 2001, ch. 578, § 22; Laws, 2002, ch. 493, § 22; Laws, 2003, ch. 525, § 22; Laws, 2005, ch. 545, § 22; Laws, 2006, ch. 391, § 21; Laws, 2008, ch. 511, § 1; Laws, 2008, ch. 563, § 25; Laws, 2011, ch. 544, § 25, eff from and after passage (approved Apr. 26, 2011.)

Amendment Notes — The 2011 amendment amended the section by substituting “July 1, 2013” for “July 1, 2011.”

§ 41-67-33. Procedures for conducting reviews requested by persons aggrieved by disapproval or requirements for on-site wastewater disposal system; hearing; final decision by State Health Officer [Repealed effective July 1, 2013].

SOURCES: Laws, 2008, ch. 563, § 20; reenacted without change, Laws, 2011, ch. 544, § 20, eff from and after passage (approved Apr. 26, 2011.)

Editor’s Note — This section was reenacted without change by Laws of 2011, ch. 544, effective from and after April 26, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2011 amendment reenacted the section without change.

§ 41-67-35. Maintenance provider must be certified by department or be a certified installer [Repealed effective July 1, 2013].

A person may not operate as a maintenance provider in this state unless that person is a maintenance provider certified by the department on April 26, 2011, or is a certified installer.

SOURCES: Laws, 2008, ch. 563, § 21; reenacted and amended, Laws, 2011, ch. 544, § 21, eff from and after passage (approved Apr. 26, 2011.)

Amendment Notes — The 2011 amendment reenacted and amended the section by rewriting the section.

§ 41-67-37. Certified professional evaluator; certification requirements; renewal; official list of certified professional evaluators; penalty for operating without certification [Repealed effective July 1, 2013].

(1) A person may not operate as a certified professional evaluator in this state unless that person is currently certified by the department or is a registered professional engineer.

(2) A person must meet one (1) of the following requirements, in addition to the additional requirements set forth in other sections of this chapter and rules and regulations of the board, in order to be eligible to become a certified professional evaluator:

- (a) Be a professional geologist registered in the State of Mississippi;
- (b) Be a professional soil classifier licensed in the State of Mississippi;

or

(c) Be a person who possesses a demonstrable, adequate and appropriate record of professional experience and/or training as determined by the department.

(3) The department shall issue a certification to a certified professional evaluator if the certified professional evaluator:

(a) Completes an application form that complies with this chapter and rules adopted under this chapter;

(b) Satisfactorily completes the certified professional evaluator training program provided by the department;

(c) Pays the annual certification fee; and

(d) Provides proof of having an errors and omissions policy or surety in effect with liability limits of at least Fifty Thousand Dollars (\$50,000.00) per occurrence and at least One Hundred Thousand Dollars (\$100,000.00) in total aggregate amount.

(4) Each certified professional evaluator shall furnish proof of certification to a property owner or the owner's representative of the property before performing a site evaluation of the property on which an individual on-site wastewater disposal system is to be designed, constructed, repaired or installed by the certified professional evaluator and to the department or its authorized representative, if requested.

(5) The department shall provide for annual renewal of certifications.

(6) The department semiannually shall disseminate to the public an official list of certified professional evaluators and provide to county health departments a monthly update of the list.

(7) If any person who is not a registered professional engineer operates in the state as a certified professional evaluator without certification by the board, the board, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each violation.

SOURCES: Laws, 2008, ch. 563, § 23, eff from and after July 1, 2009; reenacted and amended, Laws, 2011, ch. 544, § 22, eff from and after passage (approved Apr. 26, 2011.)

Amendment Notes — The 2011 amendment reenacted and amended the section by adding “or is a registered professional engineer” to the end of (1); deleting former (2)(a), which read: “Be a professional engineer registered in the State of Mississippi”; and inserting “who is not a registered professional engineer” at the beginning of (7).

§ 41-67-39. License required for person operating as pumper removing and disposing of sludge from on-site wastewater disposal systems; license requirements; official list of licensed pumpers; penalty for operating without license; suspension or revocation of pumper certification; grounds [Repealed effective July 1, 2013].

(1) A person may not be engaged in the business of removing and disposing of the sludge and liquid waste (septage) from individual on-site wastewater disposal systems in this state unless that person has a valid license issued by the department.

(2) The department shall issue a license to a pumper if the pumper:

(a) Completes an application form that complies with this chapter and rules adopted under this chapter;

(b) Satisfactorily complies with the requirements of his/her pumping and hauling equipment;

(c) Provides documentation of a disposal site approved by the Department of Environmental Quality, Office of Pollution Control;

(d) Pays the annual license fee; and

(e) Provides proof of having a valid general business liability insurance policy in effect with liability limits of at least Fifty Thousand Dollars (\$50,000.00) per occurrence and at least One Hundred Thousand Dollars (\$100,000.00) in total aggregate amount.

(3) Each pumper shall furnish proof of licensure to an individual before entering a contract with that individual for the removing and disposing of the sludge and liquid waste (septage) from an individual on-site wastewater disposal system.

(4) The department semiannually shall disseminate to the public an official list of certified pumpers and provide to county health departments a monthly update of the list.

(5) If any person operates in the state as a certified pumper without a license by the board, the board, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed Ten Thousand Dollars (\$10,000.00) for each violation.

(6) The department may suspend or revoke a pumper certification if the pumper dumps or disposes of septage or other liquid waste in an unpermitted or unapproved site.

(7) A municipal wastewater treatment facility may make a site available for certified pumpers to dispose of septic or other liquid waste.

(8) The department must provide for renewal pumper certifications to be applied for at the local department offices.

SOURCES: Laws, 2008, ch. 563, § 22; reenacted and amended, Laws, 2011, ch. 544, § 23, eff from and after passage (approved Apr. 26, 2011.)

Amendment Notes — The 2011 amendment reenacted and amended the section by substituting “certified” for “licensed” in (4), (5), and adding (6) through (8).

WASTEWATER ADVISORY BOARD

SEC.

41-67-101. Wastewater Advisory Board created; purpose; composition; terms; meetings.

§ 41-67-101. Wastewater Advisory Board created; purpose; composition; terms; meetings.

(1) There is created the Wastewater Advisory Board for the purpose of advising the Department of Health regarding individual on-site wastewater disposal systems. The advisory board shall be composed of the following:

(a) One (1) appointee of the Executive Director of the American Council of Engineering;

(b) One (1) appointee of the Executive Director of the Office of Pollution Control;

(c) One (1) appointee of the State Health Officer;

(d) One (1) appointee of the Executive Director of the Home Builders Association of Mississippi;

(e) One (1) appointee of the Chairman of the Mississippi State Board of Health that represents a Mississippi ATU manufacturer;

(f) One (1) appointee of the Executive Director of the Mississippi Engineering Society;

(g) One (1) appointee of the Executive Director of the Mississippi Manufactured Housing Association;

(h) One (1) appointee of the Chairman of the Mississippi State Board of Health that represents a certified installer;

(i) One (1) appointee of the Chairman of the Mississippi State Board of Health that represents a septic tank or aggregate disposal manufacturer;

(j) One (1) appointee of the Executive Director of the Mississippi Rural Water Association;

(k) One (1) appointee of the Executive Director of the Mississippi Association of Supervisors;

(l) One (1) appointee of the President of the Mississippi Pumpers Association;

(m) One (1) appointee of the Executive Director of the Mississippi Soil and Water Conservation Commission;

(n) One (1) appointee of the President of the Mississippi Water and Pollution Control Operators Association, Inc.;

(o) The federally appointed Mississippi State Soil Scientist, or his designee;

(p) One (1) appointee of the Director of the Mississippi State Board of Registered Professional Geologists;

(q) One (1) appointee of the Executive Director of the Mississippi Department of Environmental Quality;

(r) One (1) appointee of the Chairman of the Mississippi State Board of Health;

(s) One (1) appointee of the Executive Director of the Mississippi Association of Realtors;

(t) One (1) appointee of the Executive Director of the Mississippi Municipal League; and

(u) One (1) appointee of the Chairman of the Department of the Mississippi State University School of Civil and Environmental Engineering.

(2) The members of the advisory committee shall elect a chairman and vice chairman from its membership.

(3) The terms of appointments for each member shall be for a period of two (2) years.

(4) The advisory committee shall have quarterly meetings, with at least one (1) of those meetings taking place between forty-five (45) and sixty (60) days before the meeting of the Mississippi State Board of Health.

(5) The Mississippi Department of Health shall staff all advisory committee meetings and record minutes of those meetings.

SOURCES: Laws, 2011, ch. 544, § 24, eff from and after passage (approved Apr. 26, 2011.)

CHAPTER 75

Ambulatory Surgical Facilities

SEC.

41-75-1.

Definitions.

§ 41-75-1. Definitions.

For the purpose of this chapter:

(a) “Ambulatory surgical facility” means a publicly or privately owned institution that is primarily organized, constructed, renovated or otherwise established for the purpose of providing elective surgical treatment of “outpatients” whose recovery, under normal and routine circumstances, will not require “inpatient” care. The facility defined in this paragraph does not include the offices of private physicians or dentists, whether practicing individually or in groups, but does include organizations or facilities primarily engaged in that outpatient surgery, whether using the name “ambulatory surgical facility” or a similar or different name. That organization or facility, if in any manner considered to be operated or owned by a hospital or a hospital holding, leasing or management company, either for profit or not for profit, is required to comply with all licensing agency ambulatory surgical licensure standards governing a “hospital affiliated” facility as adopted under Section 41-9-1 et seq., provided that the organization or facility does not intend to seek federal certification as an ambulatory surgical facility as provided for at 42 CFR, Parts 405 and 416. If the organization or facility is to be operated or owned by a hospital or a hospital holding, leasing or management company and intends to seek federal certification as an

ambulatory facility, then the facility is considered to be “freestanding” and must comply with all licensing agency ambulatory surgical licensure standards governing a “freestanding” facility.

If the organization or facility is to be owned or operated by an entity or person other than a hospital or hospital holding, leasing or management company, then the organization or facility must comply with all licensing agency ambulatory surgical facility standards governing a “freestanding” facility.

(b) “Hospital affiliated” ambulatory surgical facility means a separate and distinct organized unit of a hospital or a building owned, leased, rented or utilized by a hospital and located in the same county in which the hospital is located, for the primary purpose of performing ambulatory surgery procedures. The facility is not required to be separately licensed under this chapter and may operate under the hospital’s license in compliance with all applicable requirements of Section 41-9-1 et seq.

(c) “Freestanding” ambulatory surgical facility means a separate and distinct facility or a separate and distinct organized unit of a hospital owned, leased, rented or utilized by a hospital or other persons for the primary purpose of performing ambulatory surgery procedures. The facility must be separately licensed as defined in this section and must comply with all licensing standards promulgated by the licensing agency under this chapter regarding a “freestanding” ambulatory surgical facility. Further, the facility must be a separate, identifiable entity and must be physically, administratively and financially independent and distinct from other operations of any other health facility, and shall maintain a separate organized medical and administrative staff. Furthermore, once licensed as a “freestanding” ambulatory surgical facility, the facility shall not become a component of any other health facility without securing a certificate of need to do that.

(d) “Ambulatory surgery” means surgical procedures that are more complex than office procedures performed under local anesthesia, but less complex than major procedures requiring prolonged postoperative monitoring and hospital care to ensure safe recovery and desirable results. General anesthesia is used in most cases. The patient must arrive at the facility and expect to be discharged on the same day. Ambulatory surgery shall only be performed by physicians or dentists licensed to practice in the State of Mississippi.

(e) “Abortion” means the use or prescription of any instrument, medicine, drug or any other substances or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus. Abortion procedures after the first trimester shall only be performed at a Level I abortion facility or an ambulatory surgical facility or hospital licensed to perform that service.

(f) “Abortion facility” means a facility operating substantially for the purpose of performing abortions and is a separate identifiable legal entity from any other health care facility. Abortions shall only be performed by

physicians licensed to practice in the State of Mississippi. All physicians associated with the abortion facility must have admitting privileges at a local hospital and staff privileges to replace local hospital on-staff physicians. All physicians associated with an abortion facility must be board certified or eligible in obstetrics and gynecology, and a staff member trained in CPR shall always be present at the abortion facility when it is open. The term "abortion facility" includes physicians' offices that are used substantially for the purpose of performing abortions. An abortion facility operates substantially for the purpose of performing abortions if any of the following conditions are met:

(i) The abortion facility is a provider for performing ten (10) or more abortion procedures per calendar month during any month of a calendar year, or one hundred (100) or more in a calendar year.

(ii) The abortion facility, if operating less than twenty (20) days per calendar month, is a provider for performing ten (10) or more abortion procedures, or performing a number of abortion procedures that would be equivalent to ten (10) procedures per month, if the facility were operating twenty (20) or more days per calendar month, in any month of a calendar year.

(iii) The abortion facility holds itself out to the public as an abortion provider by advertising by any public means, such as newspaper, telephone directory, magazine or electronic media, that it performs abortions.

(iv) The facility applies to the licensing agency for licensure as an abortion facility.

(g) "Licensing agency" means the State Department of Health.

(h) "Operating" an abortion facility means that the facility is open for any period of time during a day and has on site at the facility or on call a physician licensed to practice in the State of Mississippi available to provide abortions.

An abortion facility may apply to be licensed as a Level I facility or a Level II facility by the licensing agency. Level II abortion facilities shall be required to meet minimum standards for abortion facilities as established by the licensing agency. Level I abortion facilities shall be required to meet minimum standards for abortion facilities and minimum standards for ambulatory surgical facilities as established by the licensing agency.

Any abortion facility that begins operation after June 30, 1996, shall not be located within fifteen hundred (1500) feet from the property on which any church, school or kindergarten is located. An abortion facility shall not be in violation of this paragraph if it is in compliance with this paragraph on the date it begins operation and the property on which a church, school or kindergarten is located is later within fifteen hundred (1500) feet from the facility.

SOURCES: Laws, 1983, ch. 433, § 1; Laws, 1984, ch. 430; Laws, 1986, ch. 437, § 24; Laws, 1991, ch. 301, § 1; Laws, 1996, ch. 442, § 3; Laws, 2004, ch. 584, § 1; Laws, 2005, ch. 478, § 1; Laws, 2006, ch. 506, § 1; Laws, 2012, ch. 331, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added the third and fourth sentences of (f).

CHAPTER 79

Health Problems of School Children

Self-administration of Asthma Medication at School	41-79-31
Prevention of Unintended Teen Pregnancy and Sexually Transmitted Infections	41-79-51

SELF-ADMINISTRATION OF ASTHMA MEDICATION AT SCHOOL

SEC.
41-79-31. Possession and self-administration of prescription asthma and anaphylaxis medication by public and nonpublic students while on school property or at a school-related event or activity.

§ 41-79-31. Possession and self-administration of prescription asthma and anaphylaxis medication by public and nonpublic students while on school property or at a school-related event or activity.

(1) The school board of each local public school district and the governing body of each private and parochial school or school district shall permit the self-administration of asthma and anaphylaxis medication pursuant to the requirements of this section.

(2) As used in this section:

(a) "Parent" means parent or legal guardian.

(b) "Asthma and anaphylaxis medication" means inhaled bronchodilator and auto-injectable epinephrine.

(c) "Self-administration of prescription asthma and/or anaphylaxis medication" means a student's discretionary use of prescription asthma and/or anaphylaxis medication.

(3) A student with asthma and/or anaphylaxis is entitled to possess and self-administer prescription asthma and/or anaphylaxis medication while on school property, on school provided transportation, or at a school-related event or activity if:

(a) The prescription asthma and/or anaphylaxis medication has been prescribed for that student as indicated by the prescription label on the medication;

(b) The self-administration is done in compliance with the prescription or written instructions from the student's physician or other licensed health care provider; and

(c) A parent of the student provides to the school:

(i) Written authorization, signed by the parent, for the student to self-administer prescription asthma and/or anaphylaxis medication while on school property or at a school-related event or activity;

(ii) A written statement, signed by the parent, in which the parent releases the school district and its employees and agents from liability for an injury arising from the student's self-administration of prescription asthma and/or anaphylaxis medication while on school property or at a school-related event or activity unless in cases of wanton or willful misconduct;

(iii) A written statement from the student's physician or other licensed health care provider, signed by the physician or provider, that states:

1. That the student has asthma and/or anaphylaxis and is capable of self-administering the prescription asthma and/or anaphylaxis medication;
2. The name and purpose of the medication;
3. The prescribed dosage for the medication;
4. The times at which or circumstances under which the medication may be administered; and
5. The period for which the medication is prescribed.

(4) The physician's statement must be kept on file in the office of the school nurse of the school the student attends or, if there is not a school nurse, in the office of the principal of the school the student attends.

(5) If a student uses his/her medication in a manner other than prescribed, he/she may be subject to disciplinary action under the school codes. The disciplinary action shall not limit or restrict the student's immediate access to the medication.

SOURCES: Laws, 2003, ch. 493, § 1; Laws, 2010, ch. 512, § 1, *eff from and after* July 1, 2010.

Amendment Notes — The 2010 amendment rewrote the section.

Cross References — State Department of Education to require school districts to take certain actions relating to children with asthma, see § 37-11-67.

PREVENTION OF UNINTENDED TEEN PREGNANCY AND SEXUALLY TRANSMITTED INFECTIONS

SEC.

- | | |
|-----------|--|
| 41-79-51. | Teen Pregnancy Prevention Task Force created; composition, compensation, staff, duties [Repealed effective July 1, 2016]. |
| 41-79-53. | Programs to provide education, counseling, support and training to prevent unintended teen pregnancies and sexually transmitted infections; implementation by school nurses. |
| 41-79-55. | Pilot programs to be established in each health care district and located in a school district in the county having highest number of teen pregnancies. |

§ 41-79-51. Teen Pregnancy Prevention Task Force created; composition, compensation, staff, duties [Repealed effective July 1, 2016].

(1) There is created the Teen Pregnancy Prevention Task Force to study and make recommendation to the Legislature on the implementation of sex-related educational courses through abstinence-only or abstinence-plus education into the curriculum of local school districts and the coordination of services by certain state agencies to reduce teen pregnancy and provide prenatal and postnatal training to expectant teen parents in Mississippi. The task force shall make an annual report of its findings and recommendations to the Legislature beginning with the 2012 Regular Session.

(2) The task force shall be composed of the following seventeen (17) members:

(a) The Chairmen of the Senate and House Public Health and Welfare Committees, or their designees;

(b) The Chairmen of the Senate and House Education Committees, or their designees;

(c) The Chairman of the House Select Committee on Poverty;

(d) One (1) member of the Senate appointed by the Lieutenant Governor;

(e) The Executive Director of the Department of Human Services, or his or her designee;

(f) The State Health Officer, or his or her designee;

(g) The State Superintendent of Public Education, or his or her designee;

(h) The Executive Director of the Division of Medicaid, or his or her designee;

(i) The Executive Director of the State Department of Mental Health, or his or her designee;

(j) The Vice Chancellor for Health Affairs and Dean of the University of Mississippi Medical Center School of Medicine, or his or her designee;

(k) Two (2) representatives of the private health or social services sector appointed by the Governor;

(l) One (1) representative of the private health or social services sector appointed by the Lieutenant Governor;

(m) One (1) representative of the private health or social services sector appointed by the Speaker of the House of Representatives; and

(n) One (1) representative from a local community-based youth organization that teaches or has taught a federal or local school district approved curriculum.

(3) Appointments shall be made within thirty (30) days after July 1, 2011, and, within fifteen (15) days thereafter on a day to be designated jointly by the Speaker of the House and the Lieutenant Governor, the task force shall meet and organize by selecting from its membership a chairman and a vice chairman. The vice chairman shall also serve as secretary and shall be

responsible for keeping all records of the task force. A majority of the members of the task force shall constitute a quorum. In the selection of its officers and the adoption of rules, resolutions and reports, an affirmative vote of a majority of the task force shall be required. All members shall be notified in writing of all meetings, the notices to be mailed at least fifteen (15) days before the date on which a meeting is to be held. If a vacancy occurs on the task force, the vacancy shall be filled in the manner that the original appointment was made.

(4) Members of the task force who are not legislators, state officials or state employees shall be compensated at the per diem rate authorized by Section 25-3-69 and shall be reimbursed in accordance with Section 25-3-41 for mileage and actual expenses incurred in the performance of their duties. Legislative members of the task force shall be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session. However, no per diem or expense for attending meetings of the task force may be paid to legislative members of the task force while the Legislature is in session. No task force member may incur per diem, travel or other expenses unless previously authorized by vote, at a meeting of the task force, which action shall be recorded in the official minutes of the meeting. Nonlegislative members shall be paid from any funds made available to the task force for that purpose.

(5) The task force shall use clerical and legal staff already employed by the Legislature and any other staff assistance made available to it by the Department of Health, the Mississippi Department of Human Services, the Department of Mental Health, the State Department of Education and the Division of Medicaid. To effectuate the purposes of this section, any department, division, board, bureau, commission or agency of the state or of any political subdivision thereof shall, at the request of the chairman of the task force, provide to the task force such facilities, assistance and data as will enable the task force properly to carry out its duties.

(6) In order to carry out the functions and responsibilities necessary to study and make recommendations to the Legislature, the Teen Pregnancy Prevention Task Force shall:

(a) Form task force subgroups based on specific areas of expertise;

(b) Review and consider coordinated services and plans and related studies done by or through existing state agencies and advisory, policy or research organizations to reduce teen pregnancy and provide the necessary prenatal and postnatal training to expectant teen parents;

(c) Review and consider statewide and regional planning initiatives related to teen pregnancy;

(d) Consider efforts of stakeholder groups to comply with federal requirements for coordinated planning and service delivery;

(e) Evaluate the implementation of sex-related educational courses through abstinence-only or abstinence-plus education in local school districts throughout the state;

(f) Evaluate the effect of the adoption of a required sex education policy on teen pregnancy rates and dropout rates due to teen pregnancy on the local school district and statewide levels;

(g) Compare and analyze data in districts adopting and implementing abstinence-only education to districts adopting abstinence-plus education;

(h) Require the Department of Health, the Mississippi Department of Human Services, the Department of Mental Health, the State Department of Education and the Division of Medicaid to conduct a study of community programs available throughout the state, and the areas wherein they are located, which provide programs of instruction on sexual behavior and assistance to teen parents; and

(i) Work through the Department of Health, the Mississippi Department of Human Services, the Department of Mental Health, the State Department of Education and the Division of Medicaid to cause any studies, assessments and analyses to be conducted as may be deemed necessary by the task force.

(7) This section shall stand repealed on July 1, 2016.

SOURCES: Laws, 2009, ch. 507, § 2; Laws, 2011, ch. 430, § 4, eff from and after July 1, 2011.

Editor's Note — Laws of 2009, ch. 507, § 2, as amended by Laws of 2011, ch. 430, ch. 430, § 4, was codified as this section at the direction of the Co-Counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

Cross References — Abstinence-only and abstinence-plus education, see § 37-13-171.

§ 41-79-53. Programs to provide education, counseling, support and training to prevent unintended teen pregnancies and sexually transmitted infections; implementation by school nurses.

(1) The Mississippi Department of Human Services shall develop programs to accomplish the purpose of one or more of the following strategies:

(a) Promoting effective communication among families about preventing teen pregnancy, particularly communication among parents or guardians and their children;

(b) Educating community members about the consequences of unprotected, uninformed and underage sexual activity and teen pregnancy;

(c) Encouraging young people to postpone sexual activity and prepare for a healthy, successful adulthood, including teaching them skills to avoid making or receiving unwanted verbal, physical, and sexual advances;

(d) Providing medically accurate information about the health benefits and side effects of all contraceptives and barrier methods as a means to prevent pregnancy and reduce the risk of contracting sexually transmitted infections, including HIV/AIDS; or

(e) Providing educational information, including medically accurate information about the health benefits and side effects of all contraceptives and barrier methods, for young people in those communities who are already sexually active or are at risk of becoming sexually active and inform young people in those communities about the responsibilities and consequences of

being a parent, and how early pregnancy and parenthood can interfere with educational and other goals.

(2) The State Department of Health shall develop programs with the following strategies:

(a) To carry out activities, including counseling, to prevent unintended pregnancy and sexually transmitted infections, including HIV/AIDS, among teens;

(b) To provide necessary social and cultural support services regarding teen pregnancy;

(c) To provide health and educational services related to the prevention of unintended pregnancy and sexually transmitted infections, including HIV/AIDS, among teens;

(d) To promote better health and educational outcomes among pregnant teens; and

(e) To provide training for individuals who plan to work in school-based support programs regarding the prevention of unintended pregnancy and sexually transmitted infections, including HIV/AIDS, among teens.

(3) It shall be the responsibility of school nurses employed by local school districts implementing the program developed by the State Department of Health under subsection (2) of this section to carry out the functions of those strategies to promote consistency in the administration of the program.

SOURCES: Laws, 2011, ch. 430, § 2, eff from and after July 1, 2011.

§ 41-79-55. Pilot programs to be established in each health care district and located in a school district in the county having highest number of teen pregnancies.

(1) Beginning with the 2012-2013 school year, to the extent that federal or state funds are available and appropriated by the Legislature for the purposes of establishing and implementing the Prevention of Teen Pregnancy Pilot Program authorized by Section 41-79-5, the State Department of Health in conjunction with the State Department of Education shall establish a pilot program in each of the nine (9) health districts as defined by the State Department of Health, to be located in a school district in a county in that district having the highest number of teen pregnancies.

(2) The State Department of Health and the State Department of Education shall jointly provide education services through qualified personnel to increase awareness of the health, social and economic risks associated with teen pregnancy. The services and curriculum provided shall have a primary emphasis on reducing the teenage pregnancy rate in those pilot districts.

SOURCES: Laws, 2011, ch. 430, § 5, eff from and after July 1, 2011.

CHAPTER 83

Utilization Review of Availability of Hospital Resources and Medical Services**§ 41-83-9. Submission of information in conjunction with application.**

Joint Legislative Committee Note — In 2009, an enacting error in this section was corrected at the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication by removing the subsection (1) designation preceding “In conjunction with...” As enacted by Section 5 of Chapter 347, Laws of 1990, the section contained a subsection (1) but no subsection (2). The section as set out in the bound volume reflects this correction, which was ratified by the Joint Committee at its July 22, 2010, meeting.

CHAPTER 85

Mississippi Hospice Law of 1995

SEC.

41-85-7. Administration of chapter; powers and duties of administrator; collection and use of fees; suspension of processing new applications for hospice licensure until all current licenses have been surveyed [Subsection (3) repealed effective July 1, 2014].

§ 41-85-7. Administration of chapter; powers and duties of administrator; collection and use of fees; suspension of processing new applications for hospice licensure until all current licenses have been surveyed [Subsection (3) repealed effective July 1, 2014].

(1) The administration of this chapter is vested in the Mississippi Department of Health, which shall:

(a) Prepare and furnish all forms necessary under the provisions of this chapter in relation to applications for licensure or renewals thereof;

(b) Collect in advance at the time of filing an application for a license or at the time of renewal of a license a fee of One Thousand Dollars (\$1,000.00) for each site or location of the licensee;

(c) Levy a fee of Eighteen Dollars (\$18.00) per bed for the review of inpatient hospice care;

(d) Conduct annual licensure inspections of all licensees which may be the same inspection as the annual Medicare certification inspection; and

(e) Promulgate applicable rules and standards in furtherance of the purpose of this chapter and may amend such rules as may be necessary. The rules shall include, but not be limited to, the following:

(i) The qualifications of professional and ancillary personnel in order to adequately furnish hospice care;

(ii) Standards for the organization and quality of patient care;

(iii) Procedures for maintaining records; and

(iv) Provision for the inpatient component of hospice care and for other professional and ancillary hospice services.

(2) All fees collected by the department under this section shall be used by the department exclusively for the purposes of licensure, regulation, inspection, investigations and discipline of hospices under this chapter.

(3) The State Department of Health shall not process any new applications for hospice licensure after January 2007 until the department can substantiate that all current licenses and their branches have been surveyed in conjunction with rules and regulations set forth by the department to survey such licenses and branches. Existing satellite branch offices seeking licensure as required under Section 105.05 of the Minimum Standards of Operation for Hospice are exempt from this subsection. This subsection (3) shall stand repealed on July 1, 2014.

SOURCES: Laws, 1995, ch. 325, § 4; Laws, 1998, ch. 433, § 7; Laws, 2007, ch. 469, § 1; Laws, 2008, ch. 498, § 1; Laws, 2008, ch. 518, § 1; Laws, 2011, ch. 444, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment extended the date of the repealer provision for (3) from July 1, 2011 to July 1, 2014.

CHAPTER 86

Mississippi Children's Health Care Insurance Program Act

SEC.

- | | |
|-----------|---|
| 41-86-1. | Short title. |
| 41-86-5. | Definitions. |
| 41-86-7. | Establishment of insurance program; funding. |
| 41-86-9. | Transfer of health insurance program from State and School Employees Health Insurance Management Board to the Division of Medicaid. |
| 41-86-11. | Implementation of program by Division of Medicaid; reports; contracting. |
| 41-86-13. | Funding; source; effect on program. |
| 41-86-15. | Eligibility for benefits. |

§ 41-86-1. Short title.

[Effective until January 1, 2013, this section will read:]

This chapter shall be known as and may be cited as the Mississippi Children's Health Care Act.

[Effective from and after January 1, 2013, this section will read:]

This chapter shall be known as and may be cited as the Mississippi Children's Health Insurance Program Act.

SOURCES: Laws, 1998, ch. 572, § 1; reenacted without change, Laws, 2001, ch. 532, § 1; Laws, 2012, ch. 334, § 1, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment effective January 1, 2013, substituted “Mississippi Children’s Health Insurance Program Act” for “Mississippi Children’s Health Care Act.”

§ 41-86-3. Establishment of program; purpose; funding; administration; temporary plan; force and effect of section [Repealed effective January 1, 2013].

Editor’s Note — Laws of 2012, ch. 334, § 8, effective January 1, 2013, provides: “SECTION 8. Sections 41-86-3, 41-86-17, 41-86-19 and 41-86-21, Mississippi Code of 1972, which provide for a temporary program for children’s health insurance, specify the covered benefits and services to be provided under the Children’s Health Insurance Program, establish a Children’s Health Insurance Program enrollment outreach initiative, and establish a Children’s Health Insurance Program advisory board and joint legislative advisory committee, are repealed.”

§ 41-86-5. Definitions.

[Effective until January 1, 2013, this section will read:]

As used in Sections 41-86-5 through 41-86-17, the following definitions shall have the meanings ascribed in this section, unless the context indicates otherwise:

(a) “Act” means the Mississippi Children’s Health Care Act.

(b) “Administering agency” means the agency designated by the Mississippi Children’s Health Insurance Program Commission to administer the program.

(c) “Board” means the State and Public School Employees Health Insurance Management Board created under Section 25-15-303.

(d) “Child” means an individual who is under nineteen (19) years of age who is not eligible for Medicaid benefits and is not covered by other health insurance.

(e) “Commission” means the Mississippi Children’s Health Insurance Program Commission created by Section 41-86-7.

(f) “Covered benefits” means the types of health-care benefits and services provided to eligible recipients under the Children’s Health Care Program.

(g) “Division” means the Division of Medicaid in the Office of the Governor.

(h) “Low-income child” means a child whose family income does not exceed two hundred percent (200%) of the poverty level for a family of the size involved.

(i) “Plan” means the State Child Health Plan.

(j) “Program” means the Children’s Health Care Program established by Sections 41-86-5 through 41-86-17.

(k) “Recipient” means a person who is eligible for assistance under the program.

(l) “State Child Health Plan” means the permanent plan that sets forth the manner and means by which the State of Mississippi will provide

health-care assistance to eligible uninsured, low-income children consistent with the provisions of Title XXI of the federal Social Security Act, as amended.

[Effective from and after January 1, 2013, this section will read:]

As used in this chapter, the following definitions shall have the meanings ascribed in this section, unless the context indicates otherwise:

(a) “Child” means an individual who is under nineteen (19) years of age who is not eligible for Medicaid benefits and is not covered by other health insurance.

(b) “Covered benefits” means the types of health care benefits and services provided to eligible recipients under the program.

(c) “Division” means the Division of Medicaid in the Office of the Governor.

(d) “Low-income child” means a child whose family income does not exceed two hundred percent (200%) of the poverty level for a family of the size involved.

(e) “Plan” means the State Child Health Plan.

(f) “Program” means the Mississippi Children’s Health Insurance Program established by this chapter.

(g) “Recipient” means a person who is eligible for assistance under the program.

(h) “State Child Health Plan” means the permanent plan that sets forth the manner and means by which the State of Mississippi will provide health care assistance to eligible uninsured, low-income children consistent with the provisions of Title XXI of the federal Social Security Act, as amended.

SOURCES: Laws, 1998, ch. 572, § 3; Laws, 1999, ch. 546, § 1; reenacted without change, Laws, 2001, ch. 532, § 3; Laws, 2012, ch. 334, § 2, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, deleted former “(a), (b), and (c)” which provided definitions for “Act”, “Administering agency”, and “Board”; redesignated former (d) through (l), as present (a) through (h); substituted “this chapter” for “Sections 41-86-5 through 41-86-17” in the introductory language and in (f); substituted “Mississippi Children’s Health Insurance Program” for “Mississippi Children’s Health Care Act” in (f); and made minor stylistic changes.

§ 41-86-7. Establishment of insurance program; funding.

[Effective until January 1, 2013, this section will read:]

There is established a Children’s Health Care Program in Mississippi, which shall become effective upon the full implementation of the permanent State Child Health Plan authorized under Section 41-86-9. The program shall be financed by state appropriations and federal matching funds received by the state under the State Children’s Health Insurance Program established by Title XXI of the federal Social Security Act, as amended.

[Effective from and after January 1, 2013, this section will read:]

There is established a Children's Health Insurance Program in Mississippi, which shall be financed by state appropriations and federal matching funds received by the state under the Children's Health Insurance Program established by Title XXI of the federal Social Security Act, as amended.

SOURCES: Laws, 1998, ch. 572, § 4; reenacted without change, Laws, 2001, ch. 532, § 4; Laws, 2012, ch. 334, § 3, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment effective January 1, 2013, rewrote the section.

§ 41-86-9. Transfer of health insurance program from State and School Employees Health Insurance Management Board to the Division of Medicaid.

[Effective until January 1, 2013, this section will read:]

(1) A Mississippi Children's Health Insurance Program Commission is created to develop and adopt the permanent State Child Health Plan. The commission shall be composed of the following members:

- (a) The Executive Director of the Division of Medicaid;
- (b) The Executive Director of the State Department of Health;
- (c) The Mississippi Commissioner of Insurance;

(d) Two (2) members to be appointed by the Lieutenant Governor, one (1) of whom shall be a nurse practitioner who provides health-care services to children, and one (1) of whom shall be a person with experience in administering or working with plans for reimbursement or payment of health-care expenses;

(e) Two (2) members to be appointed by the Speaker of the House of Representatives, one (1) of whom shall be a physician who provides health-care services to children, and one (1) of whom shall be a person with experience in administering or working with plans for reimbursement or payment of health-care expenses; and

(f) Two (2) members to be appointed by the Governor, one (1) of whom shall be a physician who provides health-care services to children, and who shall serve as chairman of the commission, and one (1) of whom shall be a person with experience in administering or working with plans for reimbursement or payment of health-care expenses.

In making appointments to the commission, the appointing authorities shall reflect the gender and racial composition of the state.

Not later than May 1, 1998, the Governor, the Lieutenant Governor and the Speaker shall appoint the members of the commission. After the members are appointed, the commission shall meet on a date designated by the chairman of the commission in Jackson, Mississippi, to organize the commission and establish rules for transacting its business and keeping records. A majority of the members of the commission shall constitute a quorum at all commission meetings. An affirmative vote of a majority of the members shall be required in the adoption of rules, resolutions and reports. All members of

the commission shall be notified in writing of all regular and special meetings of the commission, which notices shall be mailed at least five (5) days before the dates of the meetings. The commission may establish any subcommittees that it deems desirable to study and report to the commission with respect to any matter that is within the scope of the commission.

The Division of Medicaid shall provide clerical and administrative support for the Children's Health Insurance Program Commission. In carrying out the provisions of this section, the commission may utilize the services, facilities and personnel of all departments, agencies, offices and institutions of the state. In particular, the commission shall consult with the Division of Medicaid, the Office of Insurance of the Department of Finance and Administration, the State Department of Health and the Mississippi Department of Insurance, and those agencies shall cooperate with the commission and provide the commission with any information and other assistance requested by the commission. The commission may consult and seek advice from various groups in the state in order to understand the effect of any existing laws or any changes in law being considered by the commission. For attending meetings of the commission, each member who is not a state official shall be paid per diem compensation in the amount authorized by Section 25-3-69 and each member shall receive expense reimbursement as authorized by Section 25-3-41. All expenses incurred by and on behalf of the commission shall be paid from any funds appropriated or otherwise made available for the purpose of this program, and from any grants or contributions made to the commission for its purpose. The commission shall be dissolved on August 1, 1998.

(2) The Children's Health Insurance Program Commission shall develop the State Child Health Plan, which shall set forth the manner and means by which the State of Mississippi will provide health-care assistance to eligible uninsured, low-income children under the Children's Health Care Program. The commission shall consider all options in developing the plan. The plan must be consistent with and meet the applicable requirements of Title XXI of the federal Social Security Act, as amended, and shall include:

(a) A designation of the agency of the state that will be the administering agency for the program, which shall be either the Division of Medicaid or the State and Public School Employees Health Insurance Management Board created under Section 25-15-303;

(b) Whether the administering agency will have the authority provided under Section 41-86-11(4);

(c) A description of the covered benefits and the eligibility standards for recipients;

(d) The method by which health-care benefits and services provided under the program will be coordinated with other sources of health benefits coverage for children; and

(e) Methods used to assure the quality and appropriateness of care and access to covered benefits.

(3) The Division of Medicaid shall submit the permanent plan adopted by the commission to the United States Secretary of Health and Human Services for approval on or before August 1, 1998.

(4) After the permanent plan has been developed and approved, the Children's Health Care Program shall be implemented and administered by the administering agency designated by the commission.

[Effective from and after January 1, 2013, this section will read:]

On January 1, 2013, the Mississippi Children's Health Insurance Program and the current contract for insurance services shall be transferred from the State and School Employees Health Insurance Management Board to the Division of Medicaid, and the division shall be responsible for the implementation and administration of the Mississippi Children's Health Insurance Program in accordance with federal law and regulations and this chapter from and after January 1, 2013. The Health Insurance Management Board shall be responsible for any audit or claims processing issues for the period during which the board administered the program.

SOURCES: Laws, 1998, ch. 572, § 5; reenacted without change, Laws, 2001, ch. 532, § 5; Laws, 2012, ch. 334, § 4, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote the section.

§ 41-86-11. Implementation of program by Division of Medicaid; reports; contracting.

[Effective until January 1, 2013, this section will read:]

(1) The administering agency shall adopt, in accordance with Section 25-43-1 et seq., rules and regulations for the implementation of the program, and for the coordination of the program with the state's other medical assistance programs.

(2) If the Division of Medicaid is designated as the administering agency for the program, the division shall have all of the authority set forth in Section 43-13-101 et seq.

(3) The administering agency shall make reports to the federal government and to the Legislature on the providing of benefits to those children under the program.

(4)(a) If the commission provides that the administering agency will have such authority, the administering agency shall execute a contract or contracts to provide the health-care coverage and services under the program, after first receiving bids. The contract or contracts may be executed with one or more corporations or associations authorized to do business in Mississippi. All of the coverage and services to be provided under the program may be included in one or more similar contracts, or the coverage and services may be classified into different types with each type included under one or more similar contracts issued by the same or different corporations or associations.

(b) The administering agency shall execute a contract or contracts with one or more corporations or associations that have submitted the best and

most cost-effective bids, or shall reject all bids. If the administering agency rejects all bids, it shall notify all bidders of the rejection and shall actively solicit new bids.

[Effective from and after January 1, 2013, this section will read:]

(1) The division shall adopt, in accordance with Section 25-43-1.101 et seq., rules and regulations for the implementation of the program, and for the coordination of the program with the state's other medical assistance programs.

(2) The division shall have all of the authority set forth in Section 43-13-101 et seq. in administering the program.

(3) The division shall make reports to the federal government and to the Legislature on the providing of benefits to those children under the program.

(4) The division shall execute a contract or contracts to provide the health care coverage and services under the program in a manner that is consistent with all federal and state procurement regulations.

SOURCES: Laws, 1998, ch. 572, § 6; reenacted without change, Laws, 2001, ch. 532, § 6; Laws, 2012, ch. 334, § 5, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment effective January 1, 2013, substituted “25-43-1.101” for “25-43-1” in (1); in (2), deleted “If the Division of Medicaid is designated as the administering agency for the program” at the beginning, and added “in administering the program” at the end; rewrote (4); substituted “division” for “administering agency” throughout; and made minor stylistic changes.

§ 41-86-13. Funding; source; effect on program.

[Effective until January 1, 2013, this section will read:]

(1) The Division of Medicaid shall receive state appropriations for the program and federal matching funds under the State Children's Health Insurance Program established by Title XXI of the federal Social Security Act, as amended, and the division shall provide those funds to the administering agency for the administration of the program. The Legislature shall include those funds as a line item in the appropriation to the Division of Medicaid.

(2) The program is subject to the availability of state funds specifically appropriated by the Legislature for the purpose of the program and federal matching funds under the State Children's Health Insurance Program established by Title XXI of the federal Social Security Act, as amended. The division may limit enrollment as necessary to ensure that the costs of the program do not exceed the total amount of state and federal funds appropriated by the Legislature for that purpose.

[Effective from and after January 1, 2013, this section will read:]

(1) The division shall receive state appropriations for the program and federal matching funds under the Children's Health Insurance Program established by Title XXI of the federal Social Security Act, as amended, for the administration of the program. The Legislature shall include those funds as a line item in the appropriation to the division.

(2) The program is subject to the availability of state funds specifically appropriated by the Legislature for the purpose of the program and federal matching funds under the Children's Health Insurance Program established by Title XXI of the federal Social Security Act, as amended. The division may limit enrollment as necessary to ensure that the costs of the program do not exceed the total amount of state and federal funds appropriated by the Legislature for that purpose.

SOURCES: Laws, 1998, ch. 572, § 7; reenacted without change, Laws, 2001, ch. 532, § 7; Laws, 2012, ch. 334, § 6, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment effective January 1, 2013, deleted "and the division shall provide those funds to the administering agency" following "Social Security Act, as amended" in (1); and substituted "division" for "Division of Medicaid" and Children's Health Insurance Program" for "State Children's Health Program" throughout the section.

§ 41-86-15. Eligibility for benefits.

[Effective until January 1, 2013, this section will read:]

(1) Persons eligible to receive covered benefits under Sections 41-86-5 through 41-86-17 shall be low-income children who meet the eligibility standards set forth in the plan. Any person who is eligible for benefits under the Mississippi Medicaid Law, Section 43-13-101 et seq., shall not be eligible to receive benefits under Sections 41-86-5 through 41-86-17. A person who is without insurance coverage at the time of application for the program and who meets the other eligibility criteria in the plan shall be eligible to receive covered benefits under the program, if federal approval is obtained to allow eligibility with no waiting period of being without insurance coverage. If federal approval is not obtained for the preceding provision, the Division of Medicaid shall seek federal approval to allow eligibility after the shortest waiting period of being without insurance coverage for which approval can be obtained. After federal approval is obtained to allow eligibility after a certain waiting period of being without insurance coverage, a person who has been without insurance coverage for the approved waiting period and who meets the other eligibility criteria in the plan shall be eligible to receive covered benefits under the program. If the plan includes any waiting period of being without insurance coverage before eligibility, the State and School Employees Health Insurance Management Board shall adopt regulations to provide exceptions to the waiting period for families who have lost insurance coverage for good cause or through no fault of their own.

(2) The eligibility of children for covered benefits under the program shall be determined annually by the same agency or entity that determines eligibility under Section 43-13-115(9) and shall cover twelve (12) continuous months under the program.

[Effective from and after January 1, 2013, this section will read:]

Persons eligible to receive covered benefits under this chapter shall be low-income children who meet the eligibility standards set forth in the State

Child Health Plan. Any person who is eligible for benefits under the Mississippi Medicaid Law, Section 43-13-101 et seq., shall not be eligible to receive benefits under this chapter. A person who is without insurance coverage at the time of application for the program and who meets the other eligibility criteria in the plan shall be eligible to receive covered benefits under the program.

SOURCES: Laws, 1998, ch. 572, § 8; Laws, 2000, ch. 625, § 1; reenacted and amended, Laws, 2001, ch. 532, § 8; Laws, 2003, ch. 543, § 8; Laws, 2012, ch. 334, § 7, eff from and after Jan. 1, 2013.

Amendment Notes — The 2012 amendment, effective January 1, 2013, rewrote the section.

§ 41-86-17. Covered benefits and services to be provided; deductibles or other cost-sharing requirements [Repealed effective January 1, 2013].

Editor's Note — Laws of 2012, ch. 334, § 8, effective January 1, 2013, provides:

"SECTION 8. Sections 41-86-3, 41-86-17, 41-86-19 and 41-86-21, Mississippi Code of 1972, which provide for a temporary program for children's health insurance, specify the covered benefits and services to be provided under the Children's Health Insurance Program, establish a Children's Health Insurance Program enrollment outreach initiative, and establish a Children's Health Insurance Program advisory board and joint legislative advisory committee, are repealed."

§ 41-86-19. Children's Health Insurance Program enrollment outreach initiative [Repealed effective January 1, 2013].

Editor's Note — Laws of 2012, ch. 334, § 8, effective January 1, 2013, provides:

"SECTION 8. Sections 41-86-3, 41-86-17, 41-86-19 and 41-86-21, Mississippi Code of 1972, which provide for a temporary program for children's health insurance, specify the covered benefits and services to be provided under the Children's Health Insurance Program, establish a Children's Health Insurance Program enrollment outreach initiative, and establish a Children's Health Insurance Program advisory board and joint legislative advisory committee, are repealed."

§ 41-86-21. Establishment of Children's Health Insurance Program Advisory Board and Joint Legislative Advisory Committee [Repealed effective January 1, 2013].

Editor's Note — Laws of 2012, ch. 334, § 8, effective January 1, 2013, provides:

"SECTION 8. Sections 41-86-3, 41-86-17, 41-86-19 and 41-86-21, Mississippi Code of 1972, which provide for a temporary program for children's health insurance, specify the covered benefits and services to be provided under the Children's Health Insurance Program, establish a Children's Health Insurance Program enrollment outreach initiative, and establish a Children's Health Insurance Program advisory board and joint legislative advisory committee, are repealed."

CHAPTER 87

Early Intervention Act for Infants and Toddlers

§ 41-87-5. Definitions.

Cross References — Section 37-4-5 provides that the terms “Junior College Commission” and “State Board for Community and Junior Colleges,” wherever they appear in the laws of Mississippi, shall mean the “Mississippi Community College Board.”

CHAPTER 97

State Employee Wellness and Physical Fitness Programs

State Employee Wellness and Physical Fitness Programs 41-97-1

STATE EMPLOYEE WELLNESS AND PHYSICAL FITNESS PROGRAMS

SEC.

41-97-1 through 41-97-7. [Repealed]

41-97-9. State employee wellness program; definitions; rules; creation of model program; designation of coordinator; state wellness councils.

§§ 41-97-1 through 41-97-7. Repealed.

Repealed by Laws of 2010, ch. 516, § 2, effective July 1, 2010.

§ 41-97-1. [Laws, 1995, ch. 441, § 1, eff from and after July 1, 1995.]

§ 41-97-3. [Laws, 1995, ch. 441, § 2, eff from and after July 1, 1995.]

§ 41-97-5. [Laws, 1995, ch. 441, § 3, eff from and after July 1, 1995.]

§ 41-97-7. [Laws, 1995, ch. 441, § 4, eff from and after July 1, 1995.]

Editor's Note — Former § 41-97-1 related to the administration and approval of state agency employee volunteer wellness/exercise program programs.

Former § 41-97-3 authorized the establishment of state agency wellness/exercise programs.

Former § 41-97-5 related to the duties of agencies establishing programs.

Former § 41-97-7 related to acceptance of gifts by agencies for use in programs.

§ 41-97-9. State employee wellness program; definitions; rules; creation of model program; designation of coordinator; state wellness councils.

(1) Definitions. In this section:

(a) “Department” means the Mississippi Department of Health.

(b) “State Health Officer” means the Executive Director of the Mississippi Department of Health.

(c) “State agency” means a department, institution, commission or other agency that is in the executive, judicial or legislative branch of state government.

(d) "State employee" means a state employee who participates in the state and school employees health insurance plan under Section 25-15-3 et seq.

(2) Rules. The State Board of Health is authorized to adopt rules for the administration of this section.

(3) Creation of model program; designation of coordinator.

(a) The department may designate a statewide wellness coordinator to create and develop for use by state agencies a model statewide wellness program to improve the health and wellness of state employees. The wellness program may include:

(i) Education that targets the most costly or prevalent health care claims, including information addressing stress management, nutrition, healthy eating habits, alcohol and drug abuse, physical activity, disease prevention, and smoking cessation;

(ii) The dissemination or use of available health risk assessment tools and programs, including surveys that identify an employee's risk level for health-related problems and programs that suggest to employees methods for minimizing risks;

(iii) The development of strategies for the promotion of health, nutritional and fitness-related resources in state agencies;

(iv) The development and promotion of environmental change strategies that integrate healthy behaviors and physical activity, including recommending healthy food choices in snack bars, vending machines and state-run cafeterias located in state buildings; and

(v) Optional incentives to encourage participation in the wellness program, including providing flexibility in employee scheduling to allow for physical activity and participation in the wellness program and coordinating discounts with gyms and fitness centers across the state.

(b) The statewide wellness coordinator is authorized to:

(i) Coordinate with the State and School Employees Health Insurance Management Board and other agencies that administer a health benefits program as necessary to develop the model wellness program, prevent duplication of efforts, provide information and resources to employees, and encourage the use of wellness benefits included in the health benefits program;

(ii) Maintain a set of Internet links to health resources for use by state employees;

(iii) Design an outreach campaign to educate state employees about health and fitness-related resources, including available exercise facilities, online tools, and health and fitness-related organizations;

(iv) Study the implementation and participation rates of state agency worksite wellness programs and report the findings to the Legislature biennially; and

(v) Organize an annual conference hosted by the department for all state agency wellness councils.

(c) The statewide wellness coordinator may consult with a state agency operating health care programs on matters relating to wellness promotion.

(d) A state agency shall designate an employee to serve as the wellness liaison between the agency and the statewide wellness coordinator.

(e) A state agency may implement a wellness program based on the model program or components of the model program developed under this section.

(f) The statewide wellness coordinator may assist a state agency in establishing employee wellness demonstration projects that incorporate best practices for encouraging employee participation and the achievement of wellness benefits. A wellness program demonstration project may implement strategies to optimize the return of state investment in employee wellness, including savings in direct health care costs and savings from preventing conditions and diagnoses through better employee wellness.

(4) State agency wellness councils.

(a) A state agency may facilitate the development of a wellness council composed of employees and managers of the agency to promote worksite wellness in the agency.

(b) A wellness council may work to:

(i) Increase employee interest in worksite wellness;

(ii) Develop and implement policies to improve agency infrastructure to allow for increased worksite wellness; and

(iii) Involve employees in worksite wellness programs.

(c) Members of a wellness council may review the recommendations of the statewide wellness coordinator and develop a plan to implement the recommendations.

(d) A state agency may allow its employees to participate in wellness council activities for two (2) to three (3) hours each month.

(e) The department shall provide technical support to each state agency wellness council and shall provide financial support to councils if funds are available.

(f) A wellness council may annually identify best practices for worksite wellness in the agency and report the practices to the statewide wellness coordinator.

(5) A state agency may allow all employees to attend on-site wellness seminars when offered.

SOURCES: Laws, 2010, ch. 516, § 1, eff from and after July 1, 2010.

CHAPTER 109

Leonard Morris Chronic Kidney Disease Leadership Task Force

SEC.

41-109-1. Legislative findings, creation of Leonard Morris Chronic Kidney Disease Leadership Task Force [Repealed effective July 1, 2014].

41-109-3. Composition of task force; appointment of members; meeting facilities; compensation for service on task force [Repealed effective July 1, 2014].

41-109-5. Duties of task force; recommendations; report [Repealed effective July 1, 2014].

41-109-7. Repeal of chapter.

§ 41-109-1. Legislative findings, creation of Leonard Morris Chronic Kidney Disease Leadership Task Force [Repealed effective July 1, 2014].

It is generally recognized that a significant number of the population of the State of Mississippi has a form of chronic kidney disease (CKD), including persons with seriously reduced kidney function that may progress to end-stage renal disease (ESRD) requiring kidney dialysis or the receipt of a kidney transplant. ESRD is usually the result of years of CKD caused by diabetes, high blood pressure or a family history of CKD as the primary contributing factors. Recognizing that the treatment of CKD is a tremendous expense and that the early diagnosis and effective treatment of CKD can prolong lives and delay the high cost of medical treatment, including dialysis and/or transplantation, and that there are existing, cost-effective laboratory test calculations that can assist in the early diagnosis of CKD, there is created the Leonard Morris Chronic Kidney Disease Leadership Task Force.

SOURCES: Laws, 2006, ch. 524, § 1; reenacted and amended, Laws, 2011, ch. 529, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment reenacted and amended the section by substituting “Leonard Morris Chronic Kidney Disease Leadership Task Force” for “Mississippi Chronic Kidney Disease Task Force” at the end of the last sentence.

§ 41-109-3. Composition of task force; appointment of members; meeting facilities; compensation for service on task force [Repealed effective July 1, 2014].

(1) The members of the Leonard Morris Chronic Kidney Disease Leadership Task Force shall be appointed by the Speaker of the House of Representatives, the Lieutenant Governor and the State Health Officer as follows:

(a) The Speaker and the Lieutenant Governor each shall appoint three (3) physicians from lists submitted by the Mississippi State Medical Association and the Mississippi Medical and Surgical Association, two (2) of whom shall be family practitioners, two (2) of whom shall be nephrologists and two (2) of whom shall be pathologists.

(b) The Speaker shall appoint one (1) member who represents the state affiliate of the National Kidney Foundation and one (1) member who represents the Department of Nephrology at the University of Mississippi Medical Center.

(c) The Lieutenant Governor shall appoint one (1) member who represents owners/operators of clinical laboratories in the state and one (1) member who represents a private renal care provider.

(d) The State Health Officer shall appoint one (1) member who is a dietitian licensed by the State of Mississippi.

(2) The State Health Officer or his designee shall serve as chairperson of the task force.

(3) The State Department of Health shall provide meeting facilities for the task force.

(4) The members of the task force shall not be entitled to reimbursement of expenses or to compensation for service on the task force.

SOURCES: Laws, 2006, ch. 524, § 2; reenacted and amended, Laws, 2011, ch. 529, § 2, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment reenacted and amended the section by inserting “Leonard Morris” preceding “Chronic Kidney Disease” and adding “Leadership” thereafter in (1); and adding (4).

§ 41-109-5. Duties of task force; recommendations; report [Repealed effective July 1, 2014].

The Leonard Morris Chronic Kidney Disease Leadership Task Force shall:

(a) Develop a plan to educate health care professionals about the advantages and methods of early screening, diagnosis and treatment of chronic kidney disease and its complications based on the K/DOQI Clinical Practice Guidelines for Chronic Kidney Disease or other medically recognized clinical practice guidelines and develop a plan to educate health care professionals about the advantages of end-stage renal disease (ESRD) modality education;

(b) Make recommendations on the implementation of a cost-effective plan for that early screening, diagnosis and treatment of chronic kidney disease for the state’s population; and

(c) Issue a report to the membership of the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee before each regular session of the Mississippi Legislature.

SOURCES: Laws, 2006, ch. 524, § 3; Laws, 2007, ch. 455, § 1; reenacted and amended, Laws, 2011, ch. 529, § 3, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment reenacted and amended the section by substituting “Leonard Morris Chronic Kidney Disease Leadership” for “Chronic Kidney Disease” in the first paragraph; deleted former (a), which changed the name from and after July 1, 2007; and redesignated in the remaining paragraphs.

§ 41-109-7. Repeal of chapter.

This chapter shall stand repealed on July 1, 2014.

SOURCES: Laws, 2006, ch. 524, § 4; Laws, 2007, ch. 455, § 2; Laws, 2011, ch. 529, § 4, eff from and after July 1, 2011.

Amendment Notes — The 2011 amendment extended the repealer from “July 1, 2011” to “July 1, 2014.”

CHAPTER 111

Child Death Review Panel

SEC.

41-111-1. Child death review panel created; purpose; panel membership; annual report; contents of report [Repealed effective July 1, 2013].

§ 41-111-1. Child death review panel created; purpose; panel membership; annual report; contents of report [Repealed effective July 1, 2013].

(1) There is created the Child Death Review Panel, whose primary purpose is to foster the reduction of infant and child mortality and morbidity in Mississippi and to improve the health status of infants and children.

(2) The Child Death Review Panel shall be composed of fifteen (15) voting members: the State Medical Examiner or his representative, a pathologist on staff at the University of Mississippi Medical Center, an appointee of the Lieutenant Governor, an appointee of the Speaker of the House of Representatives, and one (1) representative from each of the following: the State Coroners Association, the Mississippi Chapter of the American Academy of Pediatrics, the Office of Vital Statistics in the State Department of Health, the Attorney General's Office, the State Sheriff's Association, the Mississippi Police Chiefs Association, the Department of Human Services, the Children's Advocacy Center, the State Chapter of the March of Dimes, the State SIDS Alliance, and Compassionate Friends.

(3) The Chairman of the Child Death Review Panel shall be elected annually by the Review Panel membership. The Review Panel shall develop and implement such procedures and policies necessary for its operation, including obtaining and protecting confidential records from the agencies and officials specified in subsection (4) of this section. The Review Panel shall be assigned to the State Department of Health for administrative purposes only, and the department shall designate staff to assist the Review Panel.

(4) The Child Death Review Panel shall submit a report annually to the Chairmen of the House Public Health and Human Services Committee and the Senate Public Health and Welfare Committee on or before December 1. The report shall include the numbers, causes and relevant demographic information on child and infant deaths in Mississippi, and appropriate recommendations to the Legislature on how to most effectively direct state resources to decrease infant and child deaths in Mississippi. Data for the Review Panel's review and reporting shall be provided to the Review Panel, upon the request of the Review Panel, by the State Medical Examiner's Office, State Department of Health, Department of Human Services, medical examiners, coroners, health care providers, law enforcement agencies, any other agencies or officials having information that is necessary for the Review Panel to carry out its duties under this section. The State Department of Health shall also be responsible for printing and distributing the annual report(s) on child and infant deaths in Mississippi.

(5) This section shall stand repealed on July 1, 2013.

SOURCES: Laws, 2006, ch. 556, § 1; Laws, 2007, ch. 373, § 1; Laws, 2008, ch. 304, § 1; Laws, 2010, ch. 310, § 1; Laws, 2010, ch. 498, § 2, eff from and after July 1, 2010.

Joint Legislative Committee Note — Section 2 of ch. 498, Laws of 2010, effective July 1, 2010 (approved April 7, 2010), amended this section. Section 1 of ch. 310, Laws of 2010, effective July 1, 2010 (approved March 3, 2010), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 498, Laws of 2010, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Amendment Notes — The first 2010 amendment (ch. 310) extended the date of the repealer for the section by substituting “July 1, 2013” for “July 1, 2010” in (5).

The second 2010 amendment (ch. 498) extended the date of the repealer for the section by substituting “July 1, 2013” for “July 1, 2010” in (5).

CHAPTER 114

Restrictions on Tobacco Use in Public Facilities

SEC.
41-114-1. Use of tobacco by participant or spectator when persons under eighteen years of age are engaged in organized athletic event at public facility prohibited; exceptions, enforcement penalties.

§ 41-114-1. Use of tobacco by participant or spectator when persons under eighteen years of age are engaged in organized athletic event at public facility prohibited; exceptions, enforcement penalties.

(1) As used in this section:

(a) The term “public facility” means any building, gymnasium, athletic field, recreational area or park to which the public is invited, whether there is charge for admission or not.

(b) The term “smoke” or “smoking” means inhaling, exhaling, burning, carrying or otherwise possessing any lighted cigarette, cigar, pipe or any other object or device of any form that contains lighted tobacco or any other smoking product.

(2) During any time that persons under eighteen (18) years of age are engaged in an organized athletic event at a public facility in Mississippi, no participant in or spectator of the athletic event shall smoke in the facility, if the facility is enclosed, or within one hundred (100) feet of the facility, if the facility is not enclosed, except as permitted under subsection (3)(c) of this section.

(3) The person, agency or entity having jurisdiction or supervision over a public facility shall not allow smoking at the facility in violation of this section, and shall use reasonable efforts to prevent smoking at the facility. The person, agency or entity may take the following steps:

(a) Posting appropriate signs informing persons that smoking is prohibited at the public facility.

(b) Securing the removal of persons who smoke at the public facility in violation of this section.

(c) Providing a designated area separate from the fields of activity, to which smoking shall be restricted.

(4) Any person who violates this section shall, upon conviction, be subject to a civil fine and shall be liable as follows:

(a) For a first conviction, a warning;

(b) For a second conviction, a fine of Seventy-five Dollars (\$75.00); and

(c) For all later convictions, a fine not to exceed One Hundred Fifty Dollars (\$150.00).

Anyone convicted under this section shall be recorded as being guilty of a civil penalty and not for violating a criminal statute. Any such violation shall be triable in any justice court or municipal court with proper jurisdiction.

(5) It is the responsibility of all law enforcement officers and law enforcement agencies of this state to ensure that the provisions of this section are enforced.

(6) If the actions of a person violate both this section and Section 97-32-29, the person shall be liable only under this section or Section 97-32-29, but not under both sections.

SOURCES: Laws, 2010, ch. 537, § 1, eff from and after July 1, 2010.

CHAPTER 117

Nurse-Family Partnership Pilot Program

SEC.

41-117-1. Legislative findings.

41-117-3. Authorization to establish Nurse-Family Partnership Pilot program; components of program; program goals.

41-117-5. State Health Department and University of Mississippi Medical Center to develop recommendations and strategies to improve health care for premature infants.

§ 41-117-1. Legislative findings.

(1) The Legislature makes the following findings:

(a) The United Health Foundation (UHF) ranks Mississippi fiftieth in overall health, fiftieth in infant mortality with an infant mortality rate of eleven (11) deaths per one thousand (1,000) live births, thirtieth in immunization coverage with only seventy-six and five-tenths percent (76-⁵/₁₀%) of children ages nineteen (19) through thirty-five (35) months immunized, and fiftieth in overall child well-being, continuing a series of five (5) consecutive years for the state being last in the nation.

(b) Programs that focus on improved pregnancy outcomes, child health and development and the economic self-sufficiency of the family have been shown to be beneficial to both children and mothers.

(c) Research has shown that the Nurse-Family Partnership program improves pregnancy outcomes by helping women engage in good preventive health practices, including thorough prenatal care from their health care providers, improving their diets, and reducing their use of cigarettes, alcohol and illegal substances.

(d) The Nurse-Family Partnership program also has been shown to improve child health and development by helping parents provide responsible and competent care, and improve the economic self-sufficiency of the family by helping parents develop a vision for their own future, plan future pregnancies, continue their education and find work.

(2) The Legislature declares that establishing a Nurse-Family Partnership Pilot program in Mississippi would be very beneficial to improving pregnancy outcomes, child health and development and the economic self-sufficiency of the family in this state.

SOURCES: Laws, 2010, ch. 485, § 1, eff from and after July 1, 2010.

§ 41-117-3. Authorization to establish Nurse-Family Partnership Pilot program; components of program; program goals.

(1) The State Board of Health is authorized, in its discretion, to establish a Nurse-Family Partnership Pilot program in the State Department of Health, in conjunction with the Nurse-Family Partnership National Service Office. The pilot program shall be conditioned upon the availability of funds obtained for such purpose from public or private services. The program is an evidence-based, voluntary, nurse home visitation program that improves the health and well-being of low-income, first-time pregnant women and their children. The Nurse-Family Partnership Pilot program includes, but is not limited to, the following components:

(a) Eligibility criteria for the program include first-time pregnancy before the twenty-eighth week of gestation, and being eligible for Medicaid.

(b) Registered nurses, by making home visits to pregnant women, provide education, support and guidance regarding pregnancy and maternal health, child health and development, parenting, the mother's life course development, and identifying and using family and community supports.

(c) Home visits begin before the twenty-eighth week of pregnancy, and continue on a weekly or biweekly basis until the child turns two (2) years old.

(2) The goals of the Nurse-Family Partnership Pilot program are to:

(a) Improve pregnancy outcomes by helping women engage in good preventive health practices, including thorough prenatal care from their health care providers, improving their diets, and reducing their use of cigarettes, alcohol and illegal substances.

(b) Improve child health and development by helping parents provide responsible and competent care.

(c) Improve the economic self-sufficiency of the family by helping parents develop a vision for their own future, plan future pregnancies, continue their education and find work.

SOURCES: Laws, 2010, ch. 485, § 2, eff from and after July 1, 2010.

§ 41-117-5. State Health Department and University of Mississippi Medical Center to develop recommendations and strategies to improve health care for premature infants.

(1) In addition to implementing the Nurse-Family Partnership Pilot program, the State Health Department jointly with the University of Mississippi Medical Center may:

(a) Develop standards of care for premature infants born less than thirty-seven (37) weeks gestational age to help improve their access to and quality of care in their first year of life.

(b) Examine and make recommendations to improve hospital discharge and follow-up care procedures to promote coordinated processes as premature infants leave the hospital from either a Level 1 (well baby nursery), Level 2 (step down or transitional nursery) or Level 3 (neonatal intensive care unit) unit and transition to follow-up care by a health care provider in the community.

(c) Urge hospitals serving infants eligible for medical assistance and child health assistance to report to the state the causes and incidence of all rehospitalizations of infants born premature at less than thirty-seven (37) weeks gestational age within their first six (6) months of life.

(d) Develop recommendations for quality measures to assess health care outcomes of premature infants.

(e) Develop recommendations to ensure access to preventive health care therapies to protect premature infants from common infectious diseases, including respiratory syncytial virus.

(f) Measurably improve the quality of care for premature infants through advocacy of evidenced-based approaches and proposals for legislation, regulation and public policy change.

(2) The State Board of Health program may:

(a) Review relevant evidence-based research regarding premature infant health care and seek input from public and private entities currently associated with treatment of prematurity.

(b) Develop recommendations and strategies to improve health care for premature infants by:

(i) Developing standards of care for premature infants born less than thirty-seven (37) weeks gestational age pursuant to Section 41-117-3;

(ii) Coordinating information among appropriate professional and advocacy organizations on measures to improve health care for infants born premature; and

(iii) Issuing findings of goals, objectives, strategies and tactics to improve premature infant health care in Mississippi.

SOURCES: Laws, 2010, ch. 485, § 3, eff from and after July 1, 2010.

CHAPTER 119

Health Information Technology Act

- SEC.
- 41-119-1. Short title [Repealed effective July 1, 2014].
- 41-119-3. Mississippi Health Information Network to be public-private partnership for benefit of citizens of Mississippi [Repealed effective July 1, 2014].
- 41-119-5. Mississippi Health Information Network created; board of directors membership, terms, bylaws [Repealed effective July 1, 2014].
- 41-119-7. Purposes and duties of MS-HIN; powers of MS-HIN board and executive director [Repealed effective July 1, 2014].
- 41-119-9. Immunity for board members [Repealed effective July 1, 2014].
- 41-119-11. Property rights in information, data, or processes or software developed, designed or purchased [Repealed effective July 1, 2014].
- 41-119-13. Confidentiality of health care information and data in network [Repealed effective July 1, 2014].
- 41-119-15. Definitions [Repealed effective July 1, 2014].
- 41-119-17. State agencies required to provide MS-HIN with certain information before acquiring any health information technology [Repealed effective July 1, 2014].
- 41-119-19. Legislative Audit Committee to make certain reports regarding development of electronic health information [Repealed effective July 1, 2014].
- 41-119-21. Repeal of Sections 41-119-1 through 41-119-21.

§ 41-119-1. Short title [Repealed effective July 1, 2014].

This chapter shall be known and may be cited as the “Health Information Technology Act.”

SOURCES: Laws, 2010, ch. 545, § 1, eff from and after passage (approved Apr. 28, 2010.)

Editor’s Note — For repeal of this section, see § 41-119-21.

§ 41-119-3. Mississippi Health Information Network to be public-private partnership for benefit of citizens of Mississippi [Repealed effective July 1, 2014].

The Mississippi Health Information Network is a public-private partnership for the benefit of all of the citizens of this state.

SOURCES: Laws, 2010, ch. 545, § 2, eff from and after passage (approved Apr. 28, 2010.)

Editor’s Note — For repeal of this section, see § 41-119-21.

§ 41-119-5. Mississippi Health Information Network created; board of directors membership, terms, bylaws [Repealed effective July 1, 2014].

(1) The Mississippi Health Information Network is established, and is referred to in this chapter as the “MS-HIN.”

(2) The MS-HIN shall be governed by a board of directors (MS-HIN board) consisting of eleven (11) members. The membership of the MS-HIN board shall reasonably reflect the public-private and diverse nature of the MS-HIN.

(3) The membership of the MS-HIN board of directors shall consist of the following:

(a) The Governor shall appoint one (1) member of the MS-HIN board of directors, who shall be a representative of a health insurance carrier in Mississippi with knowledge of information technology, to serve an initial term of three (3) years;

(b) The State Board of Health shall appoint one (1) member of the MS-HIN board of directors, who shall be a representative of a Mississippi hospital with knowledge of information technology, to serve an initial term of three (3) years;

(c) The Mississippi State Medical Association shall appoint a member of the MS-HIN board of directors, who shall be a licensed physician, to serve an initial term of three (3) years;

(d) The Primary Health Care Association shall appoint a member of the MS-HIN board of directors to serve an initial term of one (1) year;

(e) The Delta Health Alliance shall appoint a member of the MS-HIN board of directors to serve an initial term of four (4) years;

(f) The Information and Quality Health Care-Mississippi Coastal Health Information Exchange (MCHIE) shall appoint a member of the MS-HIN board of directors to serve an initial term of one (1) year;

(g) The State Board of Health shall appoint a member of the MS-HIN board of directors who shall be an employee of the State Department of Health to serve an initial term of one (1) year;

(h) The Mississippi Board of Information Technology Services shall appoint a member of the MS-HIN board of directors to serve an initial term of two (2) years;

(i) The Mississippi Board of Mental Health shall appoint a member of the MS-HIN board of directors who shall be an employee of the Department of Mental Health to serve an initial term of four (4) years;

(j) The University of Mississippi Medical Center shall appoint a member of the MS-HIN board of directors to serve an initial term of two (2) years; and

(k) The Division of Medicaid shall appoint a member of the MS-HIN board of directors who shall be an employee of the Division of Medicaid to serve an initial term of two (2) years.

Initial terms shall expire on June 30 of the appropriate year, and subsequent appointments shall be made by the appointing entity for terms of four (4) years. Members may be reappointed.

(4) No state officer or employee appointed to the MS-HIN board or serving in any other capacity for the MS-HIN board will be construed to have resigned from public office or employment by reason of that appointment or service.

(5) The chairperson of the MS-HIN board shall be elected by a majority of the members appointed to the MS-HIN board.

(6) The MS-HIN board is authorized to conduct its business by a majority of a quorum. A quorum is six (6) members of the MS-HIN board.

(7) The MS-HIN board may adopt bylaws for its operations, including, but not limited to, the election of other officers, the terms of officers, and the creation of standing and ad hoc committees.

SOURCES: Laws, 2010, ch. 545, § 3, eff from and after passage (approved Apr. 28, 2010.)

Editor's Note — For repeal of this section, see § 41-119-21.

§ 41-119-7. Purposes and duties of MS-HIN; powers of MS-HIN board and executive director [Repealed effective July 1, 2014].

(1) In furtherance of the purposes of this chapter, the MS-HIN shall have the following duties:

(a) Initiate a statewide health information network to:

(i) Facilitate communication of patient clinical and financial information;

(ii) Promote more efficient and effective communication among multiple health care providers and payers, including, but not limited to, hospitals, physicians, nonphysician providers, third-party payers, self-insured employers, pharmacies, laboratories and other health care entities;

(iii) Create efficiencies by eliminating redundancy in data capture and storage and reducing administrative, billing and data collection costs;

(iv) Create the ability to monitor community health status;

(v) Provide reliable information to health care consumers and purchasers regarding the quality and cost-effectiveness of health care, health plans and health care providers; and

(vi) Promote the use of certified electronic health records technology in a manner that improves quality, safety, and efficiency of health care delivery, reduces health care disparities, engages patients and families, improves health care coordination, improves population and public health, and ensures adequate privacy and security protections for personal health information.

(b) Develop or design other initiatives in furtherance of its purpose; and

(c) Perform any and all other activities in furtherance of its purpose.

(2) The MS-HIN board is granted all incidental powers to carry out its purposes and duties, including the following:

(a) To appoint an executive director, who will serve at the will and pleasure of the MS-HIN board. The qualifications and employment terms for the executive director shall be determined by the MS-HIN board

(b) To adopt, modify, repeal, promulgate, and enforce rules and regulations to carry out the purposes of the MS-HIN;

(c) To establish a process for hearing and determining case decisions to resolve disputes under this chapter or the rules and regulations promulgated under this chapter among participants, subscribers or the public;

(d) To enter into, and to authorize the executive director to execute contracts or other agreements with any federal or state agency, any public or private institution, or any individual in carrying out the provisions of this chapter; and

(e) To discharge other duties, responsibilities, and powers as are necessary to implement the provisions of this chapter.

(3) The executive director shall have the following powers and duties:

(a) To employ qualified professional personnel as required for the operation of the MS-HIN and as authorized by the MS-HIN board;

(b) To administer the policies of the MS-HIN board; and

(c) To supervise and direct all administrative and technical activities of the MS-HIN.

(4) The MS-HIN shall have the power and authority to accept appropriations, grants and donations from public or private entities and to charge reasonable fees for its services. The revenue derived from grants, donations, fees and other sources of income shall be deposited into a special fund that is created in the State Treasury and earmarked for use by the MS-HIN in carrying out its duties under this chapter.

SOURCES: Laws, 2010, ch. 545, § 4, eff from and after passage (approved Apr. 28, 2010.)

Editor's Note — For repeal of this section, see § 41-119-21.

§ 41-119-9. Immunity for board members [Repealed effective July 1, 2014].

(1) All members of the MS-HIN board shall not be subject to and are immune from claim, suit, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken, performed or reached in good faith and without malice by any such member or members acting individually or jointly in carrying out the responsibilities, authority, duties, powers and privileges of the offices conferred by law upon them under this chapter, or any other state law, or duly adopted rules and regulations of the aforementioned committees, good faith being presumed until proven otherwise, with malice required to be shown by a complainant. All employees and staff of the MS-HIN, whether temporary or permanent, shall enjoy the same rights and privileges concerning immunity

from suit otherwise enjoyed by state employees under the Mississippi Constitution of 1890 and Section 11-46-1 et seq.

(2) The MS-HIN is not a health care provider and is not subject to claims under Sections 11-1-58 through 11-1-62. No person who participates in or subscribes to the services or information provided by the MS-HIN shall be liable in any action for damages or costs of any nature, in law or equity, that result solely from that person's use or failure to use MS-HIN information or data that were imputed or retrieved in accordance with the rules or regulations of the MS-HIN. In addition, no person will be subject to antitrust or unfair competition liability based on membership or participation in the MS-HIN, which provides an essential governmental function for the public health and safety.

SOURCES: Laws, 2010, ch. 545, § 5, eff from and after passage (approved Apr. 28, 2010.)

Editor's Note — For repeal of this section, see § 41-119-21.

§ 41-119-11. Property rights in information, data, or processes or software developed, designed or purchased [Repealed effective July 1, 2014].

(1) All persons providing information and data to the MS-HIN shall retain a property right in that information or data, but grant to the other participants or subscribers a nonexclusive license to retrieve and use that information or data in accordance with the rules or regulations promulgated by the MS-HIN board and in compliance with the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(2) Patients desiring to obtain a copy of their personal medical record or information are to request the copy from the health care provider who is the primary source of the information, and the MS-HIN shall not be required to provide this information directly to the patient.

(3) All processes or software developed, designed or purchased by the MS-HIN shall remain its property subject to use by participants or subscribers in accordance with the rules and regulations promulgated by the MS-HIN board.

SOURCES: Laws, 2010, ch. 545, § 6, eff from and after passage (approved Apr. 28, 2010.)

Editor's Note — For repeal of this section, see § 41-119-21.

§ 41-119-13. Confidentiality of health care information and data in network [Repealed effective July 1, 2014].

(1) The MS-HIN board shall by rule or regulation ensure that patient specific health information be disclosed only in accordance with the provisions

of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, which governs the electronic transmission of that information.

(2) Patient specific health information and data of the MS-HIN shall not be subject to the Federal Freedom of Information Act, Mississippi Open Records Act (Section 25-61-1 et seq.) nor to subpoena by any court. That information may only be disclosed by consent of the patient or in accordance with the MS-HIN board's rules, regulations or orders.

(3) Notwithstanding any conflicting statute, court rule or other law, the data in the network shall be confidential and shall not be subject to discovery or introduction into evidence in any civil action. However, information and data otherwise discoverable or admissible from original sources are not to be construed as immune from discovery or use in any civil action merely because they were provided to the MS-HIN.

(4) Submission of information to and use of information by the State Department of Health shall be considered a permitted disclosure for uses and disclosures required by law and for public health activities under the Health Insurance Portability and Accountability Act and the privacy rules promulgated under that act.

(5) Any violation of the rules or regulations regarding access or misuse of the MS-HIN health information or data shall be reported to the Office of the Attorney General, and shall be subject to prosecution and penalties under state or federal law.

SOURCES: Laws, 2010, ch. 545, § 7, eff from and after passage (approved Apr. 28, 2010.)

Editor's Note — For repeal of this section, see § 41-119-21.

Federal Aspects — Federal Freedom of Information Act, see 5 USCS §§ 522 et seq.

§ 41-119-15. Definitions [Repealed effective July 1, 2014].

For the purposes of this chapter, the following terms shall be defined as provided in this section:

(a) "Electronic health records" or "EHR" means electronically maintained clinical and demographic information, used by a meaningful EHR user.

(b) "Health information technology" or "HIT" means the equipment, software and networks to be used by a meaningful EHR user.

(c) "Acquisition" of HIT systems or other computer or telecommunications equipment or services means the purchase, lease, rental or acquisition in any other manner of HIT systems or any other computer or telecommunications equipment or services used exclusively for HIT.

(d) "Meaningful EHR user" means an eligible professional or eligible hospital that, during the specified reporting period, demonstrates meaningful use of certified EHR technology in a form and manner consistent with certain objectives and measures presented in applicable federal regulations as amended or adopted. These objectives and measures shall include the use of certified EHR.

(e) “Entity” means and includes all the various state agencies, officers, departments, boards, commissions, offices and institutions of the state, but does not include any agency financed entirely by federal funds.

SOURCES: Laws, 2010, ch. 545, § 8, eff from and after passage (approved Apr. 28, 2010.)

Editor’s Note — For repeal of this section, see § 41-119-21.

§ 41-119-17. State agencies required to provide MS-HIN with certain information before acquiring any health information technology [Repealed effective July 1, 2014].

(1) Before the acquisition of any HIT system, an entity shall provide MS-HIN, at a minimum, description, purpose and intent of the proposed service or system, including a description and specifications of the ability to connect to MS-HIN.

(2) Where existing entities can be used to provide the proposed HIT system, in whole or in part, the submission shall include letters of commitment, memoranda of agreements, or other supporting documentation.

(3) The MS-HIN shall review proposals for acquisition of HIT systems for the purposes contained in Section 41-119-7, and provide guidance to entities including collaborative opportunities with MS-HIN members.

(4) Any acquisition of an HIT system that was approved by the Mississippi Department of Technology Services before April 28, 2010, is exempt from the requirements of Section 41-119-15 and this section.

SOURCES: Laws, 2010, ch. 545, § 9, eff from and after passage (approved Apr. 28, 2010.)

Editor’s Note — For repeal of this section, see § 41-119-21.

§ 41-119-19. Legislative Audit Committee to make certain reports regarding development of electronic health information [Repealed effective July 1, 2014].

The Legislative Audit Committee (PEER) shall develop and make a report to the Chairmen of the Senate and House Public Health and Welfare/Medicaid Committees regarding the following electronic health records (EHR) system items:

(a) Evaluate the Request for Proposals (RFP) for the implementation and operations services for the Division of Medicaid and the University Medical Center electronic health records system and e-prescribing system for providers;

(b) Evaluate the proposed expenditures of the Mississippi Division of Medicaid (DOM) and the University Medical Center (UMC) regarding electronic health information; and

(c) Evaluate the use of American Recovery and Reinvestment Act (ARRA) funds for electronic health records system implementation in the State of Mississippi.

The PEER Committee shall make its report on or before December 1, 2010, including any recommendations for legislation.

SOURCES: Laws, 2010, ch. 545, § 10, eff from and after passage (approved Apr. 28, 2010.)

Editor’s Note — For repeal of this section, see § 41-119-21.

§ 41-119-21. Repeal of Sections 41-119-1 through 41-119-21.

Sections 41-119-1 through 41-119-21 shall stand repealed on July 1, 2014.

SOURCES: Laws, 2010, ch. 545, § 11, eff from and after passage (approved Apr. 28, 2010.)

CHAPTER 121

Requirements for Advertisements for Health Care Services

SEC.

- 41-121-1. Title [Repealed effective July 1, 2016].
- 41-121-3. Purpose [Repealed effective July 1, 2016].
- 41-121-5. Definitions [Repealed effective July 1, 2016].
- 41-121-7. Requirements [Repealed effective July 1, 2016].
- 41-121-9. Violations and enforcement [Repealed effective July 1, 2016].
- 41-121-11. Repeal of this chapter.

§ 41-121-1. Title [Repealed effective July 1, 2016].

This chapter shall be known and may be cited as “The Patient’s Right to Informed Health Care Choices Act.”

SOURCES: Laws, 2012, ch. 409, § 1, eff from and after July 1, 2012.

Editor’s Note — For repeal of this section, see § 41-121-11.

§ 41-121-3. Purpose [Repealed effective July 1, 2016].

The Legislature finds and declares that:

(a) There are a multitude of professional degrees using the term “doctor,” including Medical Doctor (M.D.); Doctor of Osteopathic Medicine (D.O.); Doctor of Dental Surgery (D.D.S.); Doctor of Podiatric Medicine (D.P.M.); Doctor of Optometry (O.D.); Doctor of Chiropractic (D.C.); Doctor of Nursing Practice (D.N.P.); Doctor of Pharmacy (Pharm.D.); and other designations which may be used by health care practitioners.

(b) Choosing a health care provider is one of the most important decisions a patient makes, which should be supported by full disclosure from their health care provider. There are differences regarding the training and

qualifications required to earn the professional degrees described in and subject to this chapter. These differences often concern the training and skills necessary to correctly detect, diagnose, prevent and treat serious health care conditions.

(c) There is a compelling state interest in patients being promptly and clearly informed of the actual training and qualifications of their health care practitioners who provide health care services. This chapter aims to provide public protection against potentially misleading and deceptive health care advertising that cause patients to have undue expectations regarding their medical treatments and outcomes.

SOURCES: Laws, 2012, ch. 409, § 2, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 41-121-11.

§ 41-121-5. Definitions [Repealed effective July 1, 2016].

For the purposes of this chapter:

(a) "Advertisement" means any communication or statement, whether printed, electronic or oral, that names the health care practitioner in relation to his or her practice, profession, or institution in which the individual is employed, volunteers or otherwise provides health care services. This includes business cards, letterhead, patient brochures, email, Internet, audio and video, and any other communication or statement used in the course of business or any other definition provided by regulations of the licensing board of proper jurisdiction.

(b) "Deceptive" or "misleading" includes, but is not limited to, any advertisement or affirmative communication or representation that misstates, falsely describes, holds out or falsely details the health care practitioner's profession, skills, training, expertise, education, board certification or licensure as determined by each respective licensing board.

(c) "Health care practitioner" means any person who engages in acts that are the subject of licensure or regulation. Categories of health care practitioner include:

(i) Practitioners of all opathic medicine, signified by the letters "M.D." or the words surgeon, medical doctor, or doctor of medicine by a person licensed to practice medicine and surgery.

(ii) Practitioners of osteopathic medicine, signified by the letters "D.O." or the words surgeon, osteopathic surgeon, osteopath, doctor of osteopathy, or doctor of osteopathic medicine.

(iii) Practitioners of nursing, signified by the letters "D.N.P.," "N.P.," "R.N.," "L.P.N.," "C.R.N.A.," or any other commonly used signifier to denote a doctorate of nursing practice, nurse practitioner, registered nurse, licensed practical nurse, or certified registered nurse anesthetist, respectively, as appropriate to signify the appropriate degree of licensure and degree earned from a regionally accredited institution of higher education in the appropriate field of learning.

(iv) Practitioners of podiatry, signified by the letters “D.P.M.” or the words podiatrist, doctor of podiatry, podiatric surgeon, or doctor of podiatric medicine.

(v) Practitioners of chiropractic, signified by the letters “D.C.” or the words chiropractor, doctor of chiropractic or chiropractic physician.

(vi) Practitioners of dentistry, signified by the letters “D.D.S.” or “D.M.D.,” as appropriate, or the words dentist, doctor of dental surgery, or doctor of dental medicine, as appropriate.

(vii) Practitioners of optometry, signified by the letters “O.D.” or the words optometrist or doctor of optometry.

(viii) Practitioners of pharmacy, signified by the letters “BSc.Pharm” or “Pharm.D.” or the words pharmacists or doctor of pharmacy.

(ix) Physician assistants, signified by the letters “P.A.” or the words physician assistant.

(x) Medical assistants, signified by the letters “M.A.” or the words medical assistant.

(xi) Practitioners of audiology, signified by the letters “Au.D.,” “Sc.D.” or “Ph.D.,” or the words audiologist or doctor of audiology.

(xii) Psychologists, therapists, speech-language pathologists, counselors, or any other health care practitioner not covered under this section, including, but not limited to, those signified by the letters “Ph.D.,” “Ed.D.,” “P.T.,” “M.P.T.” or “Psy.D.,” or “Sc.D.,” as appropriate to signify the appropriate degree of licensure and degree earned from a regionally accredited institution of higher education in the appropriate field of learning.

(d) “Licensee” means a health care practitioner who holds an active license with the licensing board governing his or her practice in this state.

SOURCES: Laws, 2012, ch. 409, § 3, eff from and after July 1, 2012.

Editor’s Note — For repeal of this section, see § 41-121-11.

§ 41-121-7. Requirements [Repealed effective July 1, 2016].

(1) An advertisement for health care services that names a health care practitioner must identify the type of license held according to the definitions under this chapter. The advertisement shall be free from any and all deceptive or misleading information.

(2) A health care practitioner providing health care services in this state must conspicuously post in their office and affirmatively communicate the practitioner’s specific licensure as defined under this chapter. This shall consist of the following: The health care practitioner shall display in his or her office a writing that clearly identifies the type of license held by the health care practitioner. The writing must be of sufficient size so as to be visible and apparent to all current and prospective patients.

(3) A health care practitioner who practices in more than one (1) office shall be required to comply with these requirements in each practice setting.

(4) Health care practitioners working in nonpatient care settings, and who do not have any direct patient care interactions, are not subject to the provisions of this chapter.

SOURCES: Laws, 2012, ch. 409, § 4, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 41-121-11.

§ 41-121-9. Violations and enforcement [Repealed effective July 1, 2016].

(1) Failure to comply with any provision under this section shall constitute a violation under this chapter.

(2) Knowingly aiding, assisting, procuring, employing or advising any unlicensed person or entity to practice or engage in acts contrary to the health care practitioner's degree of licensure shall constitute a violation under this chapter.

(3) Delegating or contracting for the performance of health care services by a health care practitioner when the licensee delegating or contracting for performance knows, or has reason to know, the person does not have the required authority under the person's licensure, shall constitute a violation under this chapter.

(4) Violations of this act relating to practitioners of pharmacy shall be regulated in accordance with the restrictions on the use of business name for pharmacists in Section 73-21-109.

(5) Each day that this chapter is violated shall constitute a separate offense and shall be punishable as such.

(6) Any health care practitioner who violates any provision under this chapter is guilty of unprofessional conduct and subject to disciplinary action under the appropriate licensure provisions governing the respective health care practitioner.

(7) Any and all fees and other amounts billed to and paid by the patient may be effectively rescinded and refunded. This includes third parties contracted to collect fees on behalf of the health care practitioner, the health care practitioner's employer, or other entity contracting with the health care practitioner as determined by each respective licensing board.

(8) The imposition of professional sanctions, administrative fees or other disciplinary actions shall be publicly reported by the governmental administrative body of proper jurisdiction at its discretion.

(9) Notwithstanding the imposition of any penalty, a professional licensing board or other administrative agency with jurisdiction may seek an injunction or other legal means as appropriate against a person or entity violating this act as determined by each respective licensing board.

(10) A licensing board may only enforce violations of this chapter with licensees that are subject to its jurisdiction.

SOURCES: Laws, 2012, ch. 409, § 5, eff from and after July 1, 2012.

Editor's Note — For repeal of this section, see § 41-121-11.

§ 41-121-11. Repeal of this chapter.

Sections 41-121-1 through 41-121-9, shall stand repealed on July 1, 2016.

SOURCES: Laws, 2012, ch. 409, § 6, eff from and after July 1, 2012.

CHAPTER 123

Office of Mississippi Physician Workforce

SEC.

- 41-123-1. Office of Mississippi Physician Workforce established; purpose, staffing, duties.
- 41-123-3. Mississippi Physician Workforce Advisory Board; composition, appointments, meetings.
- 41-123-5. Powers and duties of Office of Mississippi Physician Workforce.
- 41-123-7. Policies and procedures for awarding state financial support for creation of family medicine residency programs.
- 41-123-9. Adherence by recipient to policies and practices to continue receiving state financial support; authorized uses of financial support.
- 41-123-11. Family residency programs established with state financial support to accept students from accredited medical and osteopathic schools.
- 41-123-13. Funding for operation of Office of Mississippi Physician Workforce.

§ 41-123-1. Office of Mississippi Physician Workforce established; purpose, staffing, duties.

There is established the Office of Mississippi Physician Workforce within the University of Mississippi Medical Center (UMMC) for the purpose of overseeing the physician workforce development and needs, both in numbers and distribution, of the State of Mississippi. The office shall have a director who must be a physician licensed in the State of Mississippi. In addition, the office shall have a researcher to assist the director in collecting and analyzing data concerning the physician workforce needs of Mississippi and other necessary staff to assist in its work. The office shall have the following duties, at a minimum:

- (a) Assessing the current numbers, ages, types of practice, hospital affiliations, and geographic distribution of physicians in each medical specialty in Mississippi;
- (b) Assessing the current and future physician workforce needs of the State of Mississippi;
- (c) Supporting the creation of Family Medicine residency programs in the State of Mississippi, including the awarding of state financial support for the creation of those programs;
- (d) Encouraging the development of an adequate and geographically distributed physician workforce in all specialties for the State of Mississippi with an evolving strategic plan; and

(e) Providing an annual report to the Governor, the Legislature, the State Board of Health, and the Board of Trustees of State Institutions of Higher Learning on the current status of the physician workforce and training programs in Mississippi.

SOURCES: Laws, 2012, ch. 472, § 1, eff from and after passage (approved Apr. 24, 2012.)

§ 41-123-3. Mississippi Physician Workforce Advisory Board; composition, appointments, meetings.

(1) The Office of Mississippi Physician Workforce shall be administered by UMMC. An advisory board shall be created to assist UMMC in achieving the purpose of this chapter to be known as the “Mississippi Physician Workforce Advisory Board.” The advisory board shall be composed of the following members:

- (a) The Chairman of the State Board of Health.
- (b) The State Health Officer.

(c) Two (2) physicians appointed by and from the membership of the Mississippi State Medical Association for a term of three (3) years. Any member appointed under this paragraph may be reappointed for two (2) additional terms.

(d) Two (2) physicians appointed by and from the membership of the Mississippi Academy of Family Physicians for a term of three (3) years. Any member appointed under this paragraph may be reappointed for two (2) additional terms.

(e) One (1) physician appointed by and from the membership of each of the following organizations, whose terms shall be for three (3) years and who may be reappointed for two (2) additional terms:

- (i) Mississippi Osteopathic Medical Association;
- (ii) Mississippi Chapter, American College of Physicians;
- (iii) Mississippi Chapter, American Academy of Pediatrics;
- (iv) Mississippi Chapter, American College of OB-GYN; and
- (v) Mississippi Medical and Surgical Association.

(f) Two (2) physician designees of the Dean of the University of Mississippi School of Medicine, who will serve at the will and pleasure of the dean. One (1) of the members appointed under this paragraph must be responsible for Graduate Medical Education at the University of Mississippi School of Medicine.

(g) The Chair of the Department of Family Medicine at the University of Mississippi School of Medicine.

(h) A member of the State Board of Medical Licensure, who will serve at the will and pleasure of that board.

(i) One (1) physician designee of the Dean of the William Carey School of Medicine, who will serve at the will and pleasure of the dean.

(j) One (1) representative of the Mississippi Economic Council appointed by the president of the council, and who will serve at the will and pleasure of the president.

(k) One (1) representative of the Mississippi Development Authority appointed by the executive director of the authority, who will serve at the will and pleasure of the executive director.

(l) One (1) representative of the Mississippi Hospital Association, who will serve at the will and pleasure of the association.

(m) Two (2) representatives of the Mississippi Primary Health Care Association, who will serve at the will and pleasure of the association.

(2) Vacancies on the advisory board must be filled in a manner consistent with the original appointments.

(3) All appointments to the advisory board must be made no later than July 10, 2012. After a majority of the members are appointed, the advisory board shall meet on a date mutually agreed upon by a majority of the members for the purposes of organizing the advisory board and establishing rules for transacting its business. A majority of the members of the advisory board shall constitute a quorum at all advisory board meetings. An affirmative vote of a majority of the members present and voting shall be required in the making recommendations by the advisory board. At the organizational meeting, the advisory board shall elect a chair and vice chair from the members appointed according to paragraphs (a) through (l) of subsection (1). The chair shall serve for a term of two (2) years, upon the expiration of which the vice chair shall assume the office of chair.

(4) After the organizational meeting, the advisory board shall hold no less than two (2) meetings annually.

(5) The advisory board may form an executive committee for the purpose of transacting business that must be conducted before the next regularly scheduled meeting of the advisory board. All actions taken by the executive committee must be ratified by the advisory board at its next regularly scheduled meeting.

(6) Members of the advisory board shall serve without compensation, but may be reimbursed, subject to the availability of funding, for mileage and actual and necessary expenses incurred in attending meetings of the advisory board.

(7) The advisory board shall be housed at the University of Mississippi Medical Center.

SOURCES: Laws, 2012, ch. 472, § 2, eff from and after passage (approved Apr. 24, 2012.)

§ 41-123-5. Powers and duties of Office of Mississippi Physician Workforce.

The Office of Mississippi Physician Workforce shall have the following powers and duties, at a minimum:

(a) Developing the administrative policy for the advisory board and the Office of Mississippi Physician Workforce;

(b) Developing and implementing strategies and activities for the office and for the implementation of an evolving strategic plan to provide for the

physician workforce needs of Mississippi. In developing these strategies, the Office of Mississippi Physician Workforce and the advisory board shall seek the input of various organizations and entities including the Mississippi State Medical Association, the Mississippi Academy of Family Physicians, the Mississippi Chapters of the American College of Physicians, American Academy of Pediatrics, and American College of OB-GYN, the Mississippi Medical and Surgical Association, and the Mississippi Osteopathic Medicine Association;

(c) Establishing a budget to support the activities of the office and periodically reviewing and if appropriate, revising, that budget to meet its mission;

(d) Selecting, hiring and supervising the Director of the Office of Mississippi Physician Workforce;

(e) Reviewing the activities of the office and guiding the office in accomplishing the strategic goal of providing Mississippi's physician workforce needs.

SOURCES: Laws, 2012, ch. 472, § 3, eff from and after passage (approved Apr. 24, 2012.)

§ 41-123-7. Policies and procedures for awarding state financial support for creation of family medicine residency programs.

(1) The advisory board shall recommend policies and procedures for the awarding of state funding that creates the desired number of accredited Family Medicine residency programs that will accept both M.D. and D.O. students needed in the State of Mississippi.

(2) The UMMC with the input of the advisory board shall have the authority to award financial support, from funds specifically appropriated for that purpose by the Legislature, of up to Three Million Dollars (\$3,000,000.00) distributed over three (3) years to any hospital or entity with demonstrated commitment and resources, as determined by UMMC with input from the advisory board, to establish and operate an accredited Family Medicine residency program qualifying under subsection (1) of this section. The funds will be dispersed at the determination of the UMMC, with input from the advisory board, and may include start-up funding for residency programs.

(3) Each applicant for state financial support for creation of a Family Medicine residency program as authorized under this section must submit an application to the UMMC that conforms to requirements established by this chapter, and UMMC with input from the advisory board.

(4) In selecting recipients for state financial support authorized under this section, the UMMC may use its discretion to award funding based on geographic needs and the future success of a Family Medicine residency program.

(5) An applicant for state financial support for creation of a Family Medicine residency program may receive funding only upon approval of UMMC with input from the advisory board.

SOURCES: Laws, 2012, ch. 472, § 4, eff from and after passage (approved Apr. 24, 2012.)

§ 41-123-9. Adherence by recipient to policies and practices to continue receiving state financial support; authorized uses of financial support.

(1) Hospitals, other entities and/or residency programs must adhere to the policies and practices as stipulated by the Office of Mississippi Physician Workforce to continue receiving state financial support under this chapter.

(2) Hospitals, other entities and/or residency programs may receive state financial support that may be provided by the Office of Mississippi Physician Workforce pursuant to this chapter. Any financial support awarded by the Office of Mississippi Physician Workforce must be used for only the creation of a residency or for residency operational expenses, or the recipient will be liable for repayment of any financial support received under this chapter.

SOURCES: Laws, 2012, ch. 472, § 5, eff from and after passage (approved Apr. 24, 2012.)

§ 41-123-11. Family residency programs established with state financial support to accept students from accredited medical and osteopathic schools.

Any Family Medicine residency program established with state financial support must be capable of accepting students from both medical and osteopathic schools that are accredited by the Liaison Committee on Medical Education (LCME) or the American Osteopathic Association (AOA).

SOURCES: Laws, 2012, ch. 472, § 6, eff from and after passage (approved Apr. 24, 2012.)

§ 41-123-13. Funding for operation of Office of Mississippi Physician Workforce.

Funding for the operation of the Office of Mississippi Physician Workforce and the Mississippi Physician Workforce Advisory Board, including the salary of the director of the office and all necessary staff, shall be paid from funds specifically appropriated for that purpose by the Legislature.

SOURCES: Laws, 2012, ch. 472, § 7, eff from and after passage (approved Apr. 24, 2012.)

CHAPTER 125

Prescribed Pediatric Extended Care Centers (PPEC)

SEC.

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§ 41-125-1. Legislative intent.

It is the intent of the Legislature to develop, establish, and enforce licensure and basic standards for prescribed pediatric extended care centers in order to assure that the centers provide the necessary family-centered medical, developmental, physiological, nutritional, psychosocial and family training services.

SOURCES: Laws, 2012, ch. 524, § 1, eff from and after passage (approved May 18, 2012.)

§ 41-125-3. Definitions.

As used in this chapter, the following terms shall be defined as provided in this section:

(a) “Prescribed pediatric extended care center” or “PPEC center” means any building or buildings, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide basic nonresidential services to three (3) or more medically dependent or technologically dependent children who are not related to the owner or operator by blood, marriage or adoption and who require such services. Infants and children considered for admission to a PPEC center must have complex medical conditions that require continual care. Prerequisites for admission are a prescription from the child’s attending physician and consent of a parent or guardian.

(b) “Licensing agency” means the State Department of Health.

(c) “Basic services” include, but are not limited to, development, implementation and monitoring of a comprehensive protocol of care, developed in conjunction with the parent or guardian, which specifies the medical, nursing, psychosocial and developmental therapies required by the medically dependent or technologically dependent child served as well as the caregiver training needs of the child’s legal guardian.

(d) “Owner or operator” means a licensee.

(e) “Medical records” means medical records maintained in accordance with accepted professional standards and practices as specified in the rules implementing this chapter.

(f) “Medically dependent or technologically dependent child” means a child who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision which must be prescribed by a licensed physician and administered by, or under the direct supervision of, a licensed registered nurse.

(g) “Supportive services or contracted services” include, but are not limited to, speech therapy, occupational therapy, physical therapy, social work, developmental, child life and psychological services.

SOURCES: Laws, 2012, ch. 524, § 2, eff from and after passage (approved May 18, 2012.)

§ 41-125-5. PPEC centers to be licensed; exemptions.

(1) The licensing agency shall license and regulate all PPEC centers in the state that are not exempt under subsection (2) of this section. A license issued by the department is required for the operation of a PPEC center in this state.

(2) A facility, institution or other place operated by the federal government or any agency of the federal government is exempt from the provisions of this chapter.

SOURCES: Laws, 2012, ch. 524, § 3, eff from and after passage (approved May 18, 2012.)

§ 41-125-7. Separate licenses required; fee; exemption.

(1) Separate licenses are required for PPEC centers maintained on separate premises, even though they are operated under the same management. Separate licenses are not required for separate buildings on the same grounds.

(2) An applicant or licensee shall pay a fee for each license application and annual license renewal under this chapter and applicable rules. The amount of the fee shall be Twenty Dollars (\$20.00) for each licensed bed in the PPEC, with a minimum fee of Five Hundred Dollars (\$500.00) and a maximum fee of Five Thousand Dollars (\$5,000.00).

(3) County-operated or municipally operated PPEC centers applying for licensure under this chapter are exempt from the payment of license fees.

SOURCES: Laws, 2012, ch. 524, § 4, eff from and after passage (approved May 18, 2012.)

§ 41-125-9. Application for license; zoning.

In addition to any other information in the application that is required by the licensing agency, the application must contain the location of the facility for which a license is sought and documentation, signed by the appropriate local government official, which states that the applicant has met local zoning requirements.

SOURCES: Laws, 2012, ch. 524, § 5, eff from and after passage (approved May 18, 2012.)

§ 41-125-11. Background screening.

The licensing agency shall require criminal record background screening and fingerprinting for personnel by the Mississippi Department of Public Safety.

SOURCES: Laws, 2012, ch. 524, § 6, eff from and after passage (approved May 18, 2012.)

§ 41-125-13. Denial, suspension, revocation of licensure; administrative fines; grounds.

(1) The licensing agency may deny, revoke, and suspend a license and impose an administrative fine as provided in Section 41-121-15 for the violation of any provision of this chapter, or applicable rules.

(2) Any of the following actions by a PPEC center or its employee is grounds for action by the licensing agency against a PPEC center or its employee:

(a) An intentional or negligent act materially affecting the health or safety of children in the PPEC center.

(b) A violation of the provisions of this chapter, or applicable rules.

(c) Multiple and repeated violations of this chapter or of minimum standards or rules adopted under this chapter.

SOURCES: Laws, 2012, ch. 524, § 7, eff from and after passage (approved May 18, 2012.)

§ 41-125-15. Administrative fines; corrective action plans.

(1)(a) If the licensing agency determines that a PPEC center is not in compliance with this chapter, or applicable rules, the licensing agency may request that the PPEC center submit a corrective action plan that demonstrates a good-faith effort to remedy each violation by a specific date, subject to the approval of the licensing agency.

(b) The licensing agency may fine a PPEC center or employee found in violation of this chapter, or applicable rules, in an amount not to exceed Five Hundred Dollars (\$500.00) for each violation. Such fine may not exceed Five Thousand Dollars (\$5,000.00) in the aggregate.

(c) The failure to correct a violation by the date set by the licensing agency, or the failure to comply with an approved corrective action plan, is a separate violation for each day that the failure continues, unless the licensing agency approves an extension to a specific date.

(2) In determining if a fine is to be imposed and in fixing the amount of any fine, the licensing agency shall consider the following factors:

(a) The gravity of the violation, including the probability that death or serious physical or emotional harm to a child will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or rules were violated.

(b) Actions taken by the owner or operator to correct violations.

(c) Any previous violations.

(d) The financial benefit to the PPEC center of committing or continuing the violation.

SOURCES: Laws, 2012, ch. 524, § 8, eff from and after passage (approved May 18, 2012.)

§ 41-125-17. Closing of a PPEC center.

Whenever a PPEC center voluntarily discontinues operation, it shall, at least thirty (30) days before the discontinuance of operation, inform each child's legal guardian of the fact and the proposed time of the discontinuance.

SOURCES: Laws, 2012, ch. 524, § 9, eff from and after passage (approved May 18, 2012.)

§ 41-125-19. Rules establishing standards.

(1) To carry out the intention of the Legislature to provide safe and sanitary facilities and healthful programs, the licensing agency shall adopt and publish rules to implement the provisions of this chapter, which shall include reasonable and fair standards. Any conflict between these standards and those that may be set forth in local, county or city ordinances shall be resolved in favor of those having statewide effect. Those standards shall relate to:

(a) The assurance that PPEC services are family centered and provide individualized medical, developmental and family training services.

(b) The maintenance of PPEC centers, based upon the size of the structure and number of children, relating to plumbing, heating, lighting, ventilation and other building conditions, including adequate space, which will ensure the health, safety, comfort and protection from fire of the children served.

(c) The appropriate provisions of the most recent edition of the "Life Safety Code" shall be applied.

(d) The number and qualifications of all personnel who have responsibility for the care of the children served.

(e) All sanitary conditions within the PPEC center and its surroundings, including water supply, sewage disposal, food handling and general hygiene, and maintenance thereof, which will ensure the health and comfort of children served.

(f) Programs and basic services promoting and maintaining the health and development of the children served and meeting the training needs of the children's parents or legal guardians.

(g) Supportive, contracted, other operational and transportation services.

(h) Maintenance of appropriate medical records, data and information relative to the children and programs. Those records shall be maintained in the facility for inspection by the agency.

(2) The licensing agency shall adopt rules to ensure that:

(a) No child attends a PPEC center for more than twelve (12) hours within a twenty-four-hour period.

(b) No PPEC center provides services other than those provided to medically or technologically dependent children.

SOURCES: Laws, 2012, ch. 524, § 10, eff from and after passage (approved May 18, 2012.)

§ 41-125-21. Construction and renovation; requirements.

The requirements for the construction or renovation of a PPEC center shall comply with:

(a) All state and local requirements pertaining to building construction standards, including plumbing, electrical code, glass, manufactured buildings, accessibility for the physically disabled;

(b) The minimum standards for physical facilities in the Mississippi Child Care Standards; and

(c) The standards or rules adopted under this chapter.

SOURCES: Laws, 2012, ch. 524, § 11, eff from and after passage (approved May 18, 2012.)

§ 41-125-23. Penalty for violation.

Any person who violates any provisions of this chapter is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00). Each day of continuing violation is a separate offense.

SOURCES: Laws, 2012, ch. 524, § 12, eff from and after passage (approved May 18, 2012.)

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